

Title 45

JUVENILE JUSTICE

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Chapter 01

GENERAL PROVISIONS

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Research Guide: Following each section of this chapter appear the various codes, and their sections. upon which the juvenile justice provisions were based. The following abbreviations apply:

ASC—American Samoa Code

CRS—Colorado Revised Statutes (1973)

45.0101 Short title.

This act shall be known and may be cited as the “Juvenile Justice Act of 1980”.

History: 1980, PL 16-71 § 1.

Research Guide: CRS 19-1-101.

45.0102 Legislative declaration.

(a) The Legislature declares that the purposes of this title are to:

(1) secure for each child subject to these provisions such care and guidance, preferably with his own family, as will best serve his welfare and the interests of Samoan society;

(2) preserve and strengthen aiga ties whenever possible;

(3) remove a child from the custody of his parents only when his welfare and safety or the protection of the public would otherwise be endangered; and

(4) secure for any child removed from the custody of his parents the necessary care, guidance and discipline to assist him in becoming a responsible and productive member of society.

(b) To carry out these purposes, the provisions of this title shall be liberally construed.

History: 1980, PL 16-71 § 1.

Research Guide: CRS 19-1-102.

Case Notes:

In a petition to relinquish parental rights to a child, a court is required to first consider the best interest and welfare of the child, as well as the best interest of all concerned. A.S.C.A. §§ 45.0102, 45.0402. In re Two Minor Children, 19 A.S.R.2d 32 (1991).

A petition to relinquish parental rights to a child is not ordinarily favored unless the evidence is clear and convincing that the prospective adopting parents are in a better position to secure the best interest and welfare of the minor. A.S.C.A. §§ 45.0102, 45.0402. In re Two Minor Children, 19 A.S.R.2d 32 (1991).

Petitions of healthy, young, natural parents to relinquish their parental rights and obligations in favor of elderly relatives have been consistently rejected by the High Court. A.S.C.A. §§ 45.0102, 45.0402. In re A Minor Child, 19 A.S.R.2d 97 (1991).

45.0103 Definitions.

As used in this title, unless the context otherwise requires, the following definitions apply:

(1) “Adjudicatory hearing” means a hearing to determine whether the allegations of a petition under paragraph (a)(1) or (a)(2) of 45.0115 are supported by evidence beyond a reasonable doubt or the allegations of a petition under paragraph (a)(3) of 45.0115 are supported by a preponderance of the evidence.

(2) “Adult” means a person 18 years of age or older. However, any person 18 years of age or over falling under the continuing jurisdiction of the court, or who is before the court for an alleged delinquent act committed prior to his 18th birthday, or concerning whom a petition has been filed for his adoption other than under this title, shall be referred to as a child.

(3) “Child” means a person under 18 years of age a, person whose mental capacity has been determined by a health professional to be that of someone under the age of 18, or a developmentally disabled person regardless of age.

(4) “Child care center” means a facility approved under law: if the facility is located in another State or Territory, it shall be licensed or approved as required by law in that state or territory.

- (5) “Child in need of supervision” means any child:
- (A) who is repeatedly absent from school in violation of the requirements of 16.0302;
 - (B) who has run away from home or is otherwise beyond the control of his parent, guardian, or other legal custodial; or
 - (C) whose behavior or condition is such as to endanger his own or other welfare.
- (6) “Child placement agency” means an agency approved under law. If the agency is located in another state or territory, it shall be licensed or approved as required by law in that state or territory.
- (7) “Commit” means to transfer legal custody.
- (8) “Court” means the Trial Division of the High Court of American Samoa, except for uncontested adoptions under 45.0420 through 45.0431 then court means the District Court;
- (9) (A) “Delinquent child” means any child 10 years of age or older who, regardless of where the violation occurred, has violated:
- (I) any federal, state, or territorial law;
 - (II) any ordinance, the penalty for which may be a jail sentence; or
 - (III) any lawful order of the court made under this title.
- (B) This definition does not apply to:
- (I) children 14 years of age or older who allegedly commit crimes of violence; or
 - (II) children who within the previous 2 years have been adjudicated a delinquent child, and the act for which the child was adjudicated a delinquent would have been a felony if committed by an adult or punishable by a maximum punishment of life imprisonment or death;
 - (III) children 14 years of age or older who allegedly commit any felony subsequent to any other felony which was the subject of a hearing in which the child was certified for criminal proceedings as an adult.
- (C) A child who violates any traffic law or regulation shall be designated a “juvenile traffic offender” and shall not be designated a delinquent unless it be so ordered by the court after hearing the evidence.
- (10) “Deprivation of custody” means transfer of legal custody by the court from a parent or a previous legal custodian to another person, agency or institution.
- (11) “Detention” means the temporary care of a child who requires secure custody in physically restricting facilities pending court disposition or an execution of a court order for placement or commitment. Juvenile detention facilities are designated by the Court.
- (12) “Diagnostic and evaluation centers” means places for the examination and study of persons committed to the custody of the Department of Public Safety, Corrections Bureau.
- (13) “Dispositional hearing” means a hearing to determine what order of disposition should be made concerning a child adjudicated as delinquent, in need of supervision, or neglected or dependent. The hearing may be part of the proceeding which includes the adjudicatory hearing or it may be held at a time subsequent to the adjudicatory hearing.
- (14) “Family care home” means a facility approved under law. If the facility is located in another state or territory, it shall be licensed or approved as required by law in that state or territory.
- (15) “Group care facilities and homes” means places other than foster family care homes providing care for small groups of children.
- (16) “Guardianship of the person” means the duty and authority vested by Court action to make major decisions affecting a child including, but not limited to:

(A) the authority to consent to marriage, to enlistment in the armed forces, and to medical or surgical treatment;

(B) the authority to represent a child in legal actions and to make other decisions of substantial legal significance concerning the child;

(C) the authority to consent to the adoption of a child when parental rights have been terminated by judicial decree; and

(D) the rights and responsibilities of legal custody when legal custody has not been vested in another person, agency, or institution.

(17) "Half-way houses" means group care facilities for children who have been placed on probation or parole under the terms of this title.

(18) (A) "Legal custody" means the right to the care, custody, and control of a child and the duty to provide food, clothing, shelter, ordinary medical care, education, and discipline for a child and, in an emergency, to authorize surgery or other extraordinary care. Legal custody may be taken from a parent only by Court action.

(B) For purposes of determining the residence of a child, guardianship is in the person to whom legal custody has been granted by the Court.

(19) "Neglected or dependent child" means a child:

(A) whose parent, guardian, or legal custodian has abandoned him or has subjected him to mistreatment or abuse or whose parent, guardian, or legal custodian has suffered or allowed another to mistreat or abuse the child without taking lawful means to stop such mistreatment or abuse and to prevent it from recurring;

(B) who lacks proper parental care through the actions or omissions of the parent, guardian, or legal custodian;

(C) whose environment is injurious to his welfare;

(D) whose parent, guardian, or legal custodian fails or refuses to provide proper or necessary subsistence, education, medical care, or any other care necessary for his health, guidance, or well-being; or

(E) who is homeless, without proper care, or not domiciled with his parent, guardian, or legal custodian through no fault of his parent, guardian, or legal custodian.

(20) "Normal parental discipline" means all actions by parents, such as administration of blows by hand, strap, or light switch upon the buttocks, or any firm handling, scolding or light taps, insufficient to seriously bruise or produce medical injury or disability.

(21) "Parent" means either a natural parent of a legitimate child, or a parent by adoption, or the natural parent of an illegitimate child. A child born to a woman married at the time of its conception or birth is presumed to be the legitimate child of her husband. In the event that the mother is legally married to a different man at the time of birth than she was at the time of conception, the child is presumed to be the legitimate child of her husband at the time of conception. If this presumption is legally rebutted and no contrary determination is made, the man to whom the mother is married at the time of the child's birth is presumed to be the legitimate father of the child. The father of an illegitimate child has no parental rights to the child unless he, prior to entry of a decree of adoption, has acknowledged the child as his own by affirmatively asserting paternity as follows:

(A) causing his name to be affixed to the birth certificate of the child;

(B) paying medical or hospital bills associated with the birth of the child;

(C) paying support for the child; or

(D) otherwise asserting his paternity in writing.

(22) "Protective supervision" means a legal status created by Court order under which

the child is permitted to remain in his home or is placed with a relative or other suitable person, and supervision and assistance is provided by the Court, Department of Human and Social Services or other agency designated by the Court.

(23) “Receiving center” means a facility used to provide temporary detention and care for children by the Corrections Bureau pending placement in a training school, camp, or other facility.

(24) “Residual parental rights and responsibilities” means those rights and responsibilities remaining with the parent after legal custody, guardianship of the person, or both have been vested in another person, agency, or institution, including, but not limited to: the responsibility for support, the right to consent to adoption, the right to reasonable visitation unless restricted by the court, and the right to determine the child’s religious affiliation.

(25) “Shelter” means the temporary care of a child in physically unrestricting facilities pending Court disposition or execution of a court order for placement. Juvenile shelter facilities are designated by the Court.

(26) “Termination of parental rights” means the permanent elimination by Court order of all parental rights and duties, including residual parental rights and responsibilities.

(27) “Training schools” means institutions providing care, education, treatment, and rehabilitation for children in a closed setting.

History: 1980, PL 16-71 § 1; amd 2014, PL 33-10 § 1.

Case Notes:

Subsection (19): Legal termination available only when child has been neglected by one or both natural parents or is homeless. *Three Minor Children*, 2 ASR2d 4 (1986).

Proceedings to terminate parental rights upon ground that the children are neglected and dependent are adversarial in nature, in contrast to relinquishment proceedings which are voluntary. A.S.C.A. §§ 45.0115, 45.0103, 45.0401. *In re Two Minor Children*, 8 A.S.R.2d 75 (1988).

Territorial statute vesting discretion in attorney general to proceed against certain minors as adults was not constitutionally defective due to alleged inconsistency with general purpose of juvenile justice statute to accord special treatment to minors, since both the general rules of statutory construction and the specific language of another statutory provision indicated that the exception was deliberate and purposeful. A.S.C.A. §§ 45.0103(9)(B)(I), 45.0115(c)(2)(a). *American Samoa Government v. Julio*, 9 A.S.R.2d 128 (1988).

Research Guide: CRS 19-1-103, 15 ASC 281, 15 ASC 662(14), 15 ASC 4802, 17 ASC 1, 17 ASC 651, 17 ASC 653, 18 ASC 5, 21 ASC 2901, 33 ASC 2, 33 ASC 3, 33 ASC 53.

45.0104 Child not neglected-When.

Notwithstanding any other provision of this title, no child who in good faith is under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denominations by a duly accredited practitioner shall, for that reason alone, be considered to have been neglected. Notwithstanding the above, the Court may intervene if the child’s life is threatened to further protect the child’s welfare.

History: 1980, PL 16-71 § 1.

Research Guide: CRS 19-1-114.

45.0115 Original jurisdiction.

(a) The Trial Division of the High Court of American Samoa has exclusive original

jurisdiction in proceedings:

- (1) concerning any delinquent child, as defined in subsections (2) and (9) of 45.0103;
- (2) concerning any child in need of supervision, as defined in subsection (5) of 45.0103;
- (3) concerning any child who is neglected or dependent, as defined in subsection (19) of 45.0103;
- (4) to determine the legal custody of any child or to appoint a guardian of the person or legal custodian of any child who comes within the Court's jurisdiction under provisions of this section;
- (5) to terminate the legal parent-child relationship, including termination of residual parental rights and responsibilities as defined in subsection (24) of 45.0103;
- (6) for the issuance of orders of support under 45.1601 through 45.1604;
- (7) to determine the paternity of a child and to make an order of support in connection with it;
- (8) for the contested adoption of a person of any age and relinquishment proceeding under 45.0401 through 45.0403 (uncontested adoptions are under 45.0420 through 45.0431; see subsection (8) of 45.0103);
- (9) for judicial consent to the marriage, employment, or enlistment of a child, when the consent is required by law.

(b) The Court may issue temporary orders providing for protection, support, or medical or surgical treatment it considers in the best interests of any child concerning whom a petition has been filed prior to adjudication or disposition of his case.

(c) (1) When a petition filed in Court alleges a child 14 years of age or older to be a delinquent child as defined in subsection (a) of 45.0103 by virtue of having committed an act which would constitute a felony if committed by an adult and if, after investigation and a hearing, the Court finds it would be contrary to the best interests of the child or of the public to prosecute the child as a juvenile, it may enter an order certifying the child to be held for criminal proceedings as an adult. The hearing required in this subsection is held under 45.0124.

(2) A child may be charged with the commission of a felony only after the hearing as provided in paragraph (1), or when the child is:

- (A) alleged to have committed a crime of violence and is 14 years of age or older;
- (B) alleged to have committed a crime punishable by a maximum punishment of life imprisonment or death, and is 16 years of age or older, and the child has been adjudicated a delinquent child within the previous 2 years and the act for which the child was adjudicated a delinquent would have constituted a felony if committed by an adult; or
- (C) alleged to have committed any felony subsequent to any other felony which was the subject of a hearing in which the child was certified for criminal proceedings as an adult.

(d) Nothing in this section may deprive the Court of jurisdiction to appoint a guardian for a child nor jurisdiction to determine the legal custody of a child upon writ of habeas corpus or when the question of legal custody is incidental to the determination of a cause in the court.

History: 1980, PL 16-71 § 1.

Case Notes:

Proceedings to terminate parental rights upon ground that the children are neglected and dependent are adversarial in nature, in contrast to relinquishment proceedings which are voluntary. A.S.C.A. §§ 45.0115, 45.0103, 45.0401. In re Two Minor Children, 8 A.S.R.2d 75 (1988).

Territorial statute vesting discretion in attorney general to proceed against certain minors as adults was not constitutionally defective due to alleged inconsistency with general purpose of juvenile justice statute to accord special treatment to minors, since both the general rules of statutory construction and the specific language of another statutory provision indicated that the exception was deliberate and purposeful. A.S.C.A. §§ 45.0103(9)(B)(I), 45.0115(c)(2)(a). American Samoa Government v. Julio, 9 A.S.R.2d 128 (1988).

Research Guide: CRS 19-1-104, 21 ASC 2911, 33 ASC 53.

45.0120 Right to counsel.

(a) At his first appearance before the Court, the child and his parents, guardian, or other legal custodian shall be fully advised by the Court of their constitutional and legal rights, including the right to a jury trial as provided in 45.0123 and the right to be represented by counsel at every stage of the proceedings.

(b) If the child or his parents, guardian, or other legal custodian requests an attorney and is found to be without sufficient financial means, counsel shall be appointed by the Court in proceedings:

(1) under paragraph (a)(1) or (a)(2) of 45.0115; or

(2) under paragraph (a)(3) of 45.0115, when the termination of parental rights is stated as possible remedy in the summons, as provided in 45.0311.

(c) The Court may appoint counsel without a request if it considers representation by counsel necessary to protect the interests of the child or of other parties.

History: 1980, PL 16-71 § 1.

Research Guide: CRS 19-1-106.

45.0121 Nonrepresentation by counsel-Motion for new trial.

If the child and his parents, guardian, or other legal custodian were not represented by counsel at his first appearance, the court shall inform them at the conclusion of the proceedings that they have the right to file a motion for a new trial and that if the motion is denied, they have the right to appeal.

History: 1980, PL 16-71 § 1.

Research Guide: CRS 19-1-106.

45.0122 Representation by Attorney General.

Upon the request of the Court, the Attorney General represents the Territory in the interest of the child in any proceedings brought under paragraph (a)(3) of 45.0115, and in other proceedings brought under this title, when the child is the victim.

History: 1980, PL 16-71 § 1.

Research Guide: CRS 19-1 -106.

45.0123 Trial by jury-Waiver.

A child, his parent, his guardian, or any interested party may demand a trial by jury, or the Court on its own motion may order the jury to try any case in adjudicatory hearings under paragraph (a)(1) of 45.0115, when a child is alleged to have committed an act

which would be a felony if committed by an adult. Unless a jury is demanded, it is considered waived.

History: 1980, PL 16-71 § 1.

Research Guide: CRS 19-1-106

45.0124 Hearing-Procedure-Record-Publicity.

(a) The Court shall adopt rules of procedure to apply in all proceedings under 45.0115.

(b) Hearings shall be held before the Court without a jury, except as provided in 45.0123, and may be conducted in an informal manner, except in proceedings brought under subsection (b) of 45.0115. The general public is to be excluded. The Court may determine that it is in best interests of the child to admit those persons having an interest in the case or the work of the Court, including persons whom the parents or guardian wish to be present: provided, however, that the admission of those persons does not adversely affect the protection of the child.

(c) A verbatim record shall be taken of all proceedings which might result in the deprivation of custody. A verbatim record shall be made in all other hearings, including any hearing conducted by a referee, unless waived by the parties in the proceeding and so ordered by the judge or referee.

(d) When more than 1 child is named in a petition alleging delinquency, need of supervision, or neglect or dependency, the hearings may be consolidated, except that separate hearings may be held with respect to disposition.

(e) Children's cases shall be heard separately from adults cases, and the child or his parents, guardian, or other custodian may be heard separately when considered necessary by the Court.

(f) The name, picture, place of residence, or identity of any child, parent, guardian, other custodian, or any person appearing as a witness in proceedings under 45.0115 may not be published in any newspaper or in any other publication nor given any other publicity, unless for good cause it is specifically permitted by order of the Court. Any person who violates the provisions of this subsection is guilty of a misdemeanor.

History: 1980, PL 16-71 § 1.

Case Notes:

Offenses allegedly committed before defendant's 18th birthday must be filed in Juvenile Court, even if defendant is over 18 when charges are filed. Then, prosecution may petition that defendant be tried as adult. *Government v. Fuaalii*, ASR (1976).

Research Guide: CRS 19-1-107, 33 ASC 51, 33 ASC 52.

45.0130 Social study and other reports.

(a) Unless waived by the Court, a juvenile officer or other agency designated by the court shall make a social study and report in writing in all children's cases, except:

(1) if the allegations of a petition filed under paragraph (a)(1) of 45.0115 are denied, the study may not be made until the Court has entered an order of adjudication as provided in 45.0335; and

(2) the study and investigation in all adoptions is made under 45.0421.

(b) For the purpose of determining proper disposition of a child, written reports and other material relating to the child's mental, physical, and social history may be received and considered by the Court along with other evidence; but the Court, if so requested by

the child, his parent or guardian, or other interested party, shall require that the person who wrote the report or prepared the material appear as a witness and be subject to both direct and cross-examination. In the absence of the request, the Court may order the person who prepared the report or other material to appear if it finds that the interest of the child, his parent or guardian, or other party to the proceedings so requires.

(c) The Court shall inform the child, his parent, or legal guardian, or other interested party of the right of cross-examination concerning any written report or other material as specified by subsection (b).

History:1980, PL 16-71 § 1

Research Guide: CRS 19-1-108, 21 ASC 2902.

45.0135 Effect of proceedings.

(a) No adjudication or disposition in proceedings under 45.0115 imposes any civil disability upon a child or disqualifies him from any personnel system or military service application or appointment or from holding public office.

(b) No adjudication, disposition, or evidence given in proceedings brought under 45.0115 is admissible against a child in any criminal or other action or proceeding, except in subsequent proceedings under 45.0115 concerning the same child.

History:1980, PL 16-71 § 1.

Research Guide: CRS 19-1-109.

45.0140 Referees-Qualifications-Duties.

(a) The Court may appoint 1 or more referees to hear any case or matter under the Court's jurisdiction, except where a jury trial has been requested. Referees serve at the pleasure of the Court, unless otherwise provided by law.

(b) A person need not be licensed to practice law in the Territory of American Samoa to be appointed a referee. However, if the Court appoints a referee who is not licensed to practice law, the Court shall instruct the referee as to appropriate juvenile law and procedure.

(c) Referees shall conduct hearings in the manner provided for the hearing of cases by the Court. Prior to any hearing, except those at which the child is advised of his rights and either admits or denies the allegations of the petition, the referee shall inform the parties that they have the right to a hearing before the Court in the first instance and that they may waive that right, but that by waiving that right, they are bound by the findings and recommendations of the referee except as provided in subsection (e).

(d) At the conclusion of a hearing, the referee shall:

(1) transmit promptly to the Court all papers relating to the case together with his findings and recommendations in writing;

(2) advise the parties before him of his findings and recommendations; and

(3) advise the parties of their right to review of the findings and recommendations by the court.

(e) A request for review shall be filed within 5 days after the conclusion of the hearing and shall clearly set forth the grounds relied upon. The review shall be solely upon the record of the hearing before the referee. If review is not requested, the findings and recommendations of the referee becomes the decree of the Court when confirmed by order of the Court. The judge may, on his motion, order a hearing of any case before a referee.

History: 1980, PL 16-11 § 1.

Research Guide: CRS 19-1-110.

45.0141 Records of court proceedings-Inspection.

(a) Records of Court proceedings shall be open to inspection by the parents or guardian, attorneys, and other parties in proceedings before the Court, and to any agency to which legal custody of the child has been transferred, except as provided in 45.0404.

(b) With consent of the Court, records of court proceedings may be inspected by the child, by persons having a legitimate interest in the proceedings, and by persons conducting pertinent research studies, except as provided in 45.0404.

(c) Juvenile officers records and all other reports of social and clinical studies shall not be open to inspection, except by consent of Court.

History: 1980, PL 16-71 § 1.

Research Guide: CRS 19-1-111.

45.0142 Records of court proceedings-Petition for expungement.

(a) Any person who has been adjudicated under paragraph (a)(1) or (a)(2) of 45.0115, who was handled under paragraph (3) of 45.0302, or who was the subject of a petition dismissed under subsection (b) of 45.0332 may petition the Court for the expungement of his record and shall be so informed at the time of adjudication, or the Court, on its own motion or on the motion of the juvenile officer, may initiate expungement proceedings concerning the record of any child who has been under the jurisdiction of the Court. Except as otherwise provided in this section, the petition shall be filed or the Court order entered no sooner than 2 years after the date of termination of the Court's jurisdiction over the person, or 2 years after his unconditional release from parole supervision, if he had been committed to the Corrections Bureau. Only by stipulation of all parties involved may expungement be applied for prior to the expiration of 2 years from the date of termination of the Court's jurisdiction or termination of the Court's supervision under an informal adjustment.

(b) Upon the filing of a petition or entering of a Court order, the Court shall set a date for a hearing and shall notify the Attorney General and anyone else whom the Court has reason to believe may have relevant information related to the expungement of the record.

(c) The Court shall order sealed all records in the petitioner's case in the custody of the Court and any records in the custody of any other agency or official, including the records specified in 45.0206 and 45.0207 if at the hearing the Court finds that:

(1) the subject of the hearing has not been convicted of a felony or of a misdemeanor or has not been adjudicated under paragraph (a)(1) of 45.0115 since the termination of the court's jurisdiction or his unconditional release from parole supervision;

(2) no proceeding concerning a felony, a misdemeanor, or a petition under paragraph (a)(1) of 45.0115 is pending or being instituted against him; and

(3) the rehabilitation of the person has been attained to the satisfaction of the court.

(d) Upon the entry of an order to seal the records, the proceedings on the case are considered never to have occurred, and all references are deleted, and the person and the Court may properly reply that no record exists with respect to that person upon any inquiry in the matter.

- (e) Copies of the order are sent to each agency or official named in it.
- (f) Inspection of the records included in the order may afterward be permitted by the Court only upon petition by the person who is the subject of the records and only to those persons named in the petition.

History: 1980, PL 16-71 § 1.

Research Guide: CRS 19-1-111.

45.0143 Record of court proceedings-Order for expungement.

In any proceeding under paragraph (a)(1) or (a)(2) of 45.0115 in which the Court orders the petition dismissed as provided in 45.0334, the Court may order the records expunged as in subsections (c) to (f) of 45.0142. The order of expungement may be entered without delay upon petition of the child or any party or upon the Court's own motion.

History: 1980, PL 16-71 § 1.

Research Guide: CRS 19-1-111

45.0145 Appeals.

(a) An adjudication in juvenile delinquency proceedings under 45.0115, and all orders in connection with those proceedings, are subject to appeal as in civil actions: except, that no filing fees are required.

(b) The people of the Territory of American Samoa have the same right to appeal questions of law in delinquency cases under paragraph (a) (1) of 45.0115 as exist in criminal cases.

History: 1980, PL 16-71 § 1.

Research Guide: CRS 19-1-112, 33 ASC 56.

Chapter 02

TEMPORARY CUSTODY, DETENTION AND SHELTER

Sections:

- 45.0201 Taking children into custody.**
- 45.0202 Notice to parents-Right to prompt hearing.**
- 45.0203 Release of child.**
- 45.0204 Length of detention-Admissibility of evidence.**
- 45.0205 Notice of custody-Filing of report.**
- 45.0206 Records of custody separate from records of arrest.**
- 45.0207 Transmission of identifying information restricted.**
- 45.0210 Detention and shelter-Hearing-Time limits restriction.**
- 45.0215 Search warrants for the protection of children.**

Research Guide: Following each section of this chapter appear various codes, and their sections, upon which the juvenile justice provisions were based. The following abbreviations apply:

ASC—American Samoa code.

CRS—Colorado Revised Statutes (1973).

45.0201 Taking children into custody.

(a) A child may be taken into temporary custody by a law enforcement officer without order of the Court:

(1) when there are reasonable grounds to believe that he has committed an act which would be a felony or misdemeanor if committed by an adult, except that traffic violations shall be handled as otherwise provided by law;

(2) when he is abandoned, lost, or seriously endangered in his surroundings or seriously endangers others and immediate removal appears to be necessary for his protection or the protection of others; or

(3) when there are reasonable grounds to believe that he has run away from his parents, guardian or legal custodian.

(b) A juvenile officer may take a child into temporary custody:

(1) under any of the circumstances stated in subsection (a); or

(2) if he has violated the conditions of probation and he is under the continuing jurisdiction of the Court.

(c) The taking of a child into temporary custody under this section is not an arrest nor does it constitute a police record.

History: 1980, PL 16-71 § 1.

Research Guide: CRS 19-2-101, 21 ASC 2905.

45.0202 Notice to parents-Right to prompt hearing.

When a child is taken into temporary custody, the officer shall notify a parent, guardian, or legal custodian as soon as possible and within 12 hours, and inform him that, if the child is placed in detention pursuant to paragraph (a)(1) of 45.0201, all parties have a right to a prompt hearing to determine whether the child is to be detained further. The notification may be made to a person with whom the child is residing if a parent, guardian, or legal custodian cannot be located. It is the duty of the law enforcement officer taking the child into custody to make the notification. No child which falls under paragraphs (a)(2) and (a)(3) of 45.0201 may be placed in detention but may be placed in a shelter facility, under 45.0203.

History: 1980, PL 16-71 § 1

Research Guide: CRS 19-2-102.

45.0203 Release of child.

After notification pursuant to 45.0202, the child shall be released to the care of his parents or other responsible adult, unless his immediate welfare or the protection of the community requires that he be detained. The parent or other person to whom the child is released may be required to sign a written promise, on forms supplied by the Court, to bring the child to the Court at a time set, or to be set, by the Court.

History: 1980, PL 16-71 § 1.

Research Guide: CRS 19-2-102.

45.0204 Length of detention-Admissibility of evidence.

(a) Except as provided in subsection (b), a child may not be detained by law enforcement officials any longer than is reasonably necessary to obtain his name, age,

residence, and other necessary information and to contact his parents, guardian, or legal custodian.

(b) If he is not released as provided in 45.0203, he must be taken directly to the Court or to a detention or shelter facility without unnecessary delay.

(c) No statements or admissions of a child made as a result of custodial interrogation of the child by a law enforcement official concerning acts alleged to have been committed by the child which would constitute a crime if committed by an adult are admissible in evidence against that child in any delinquency proceeding in which the child is a respondent unless the Court first determines, based upon the totality of the circumstances, that the statements or admissions were voluntary and preceded by adequate warnings of the child's constitutional rights.

(d) Prior to commencement of any custodial interrogation of a child, law enforcement officials shall make reasonable efforts to obtain the presence of the child's parent or guardian, or, if a parent or guardian is not otherwise reasonably available, a responsible adult occupying a place in the child's immediate family, extended family, or village structure, or otherwise standing *in loco parentis* or otherwise in the role of care-giver to the child. Failure to obtain the presence of an individual enumerated herein shall not require suppression of the admission or statement if the Court determines the statement or admission otherwise satisfies the requirements of subsection (c) above.

History: 1980, PL 16-71 § 1; 2004, PL 28-9.

Research Guide: CRS 19-2-102.

45.0205 Notice of custody-Filing of report.

The officer or other person who takes a child to a detention or shelter facility pursuant to 45.0201 shall immediately notify the Court and any agency or persons so designated by the Court that the child has been taken into custody and where he has been taken. He shall also promptly file a brief written report with the Court and any agency or person so designated by the Court stating the facts which led to the child being taken into custody and the reason why the child was not released.

History: 1980, PL 16-71 § 1.

Research Guide: CRS 19-2-102.

45.0206 Records of custody separate from records of arrest.

The records of law enforcement officers concerning all children taken into temporary custody or issued a summons under the provisions of this chapter shall be maintained separately from the records of arrest and may not be inspected by or disclosed to the public, including the names of children taken into temporary custody or issued a summons; except:

- (1) by order of the Court;
- (2) when the Court orders the child to be held for criminal proceedings as under subsection (d) of 45.0115; or
- (3) when there has been a criminal conviction and a pre-sentence investigation is being made on an application for probation.

History: 1980, PL 16-71 § 1

Research Guide: CRS 19-2-1 02.

45.0207 Transmission of identifying information restricted.

No fingerprint, photograph, name, address, or other information concerning identity of a child taken into temporary custody or issued a summons under this chapter may be transmitted to any person or agency except a local law enforcement agency when necessary to assist in apprehension or to conduct a current investigation, or when the Court orders the child to be held for criminal proceedings under subsection (d) of 45.0115.

History:1980, PL 16-7 § 1.

Research Guide: CRS 19-2-102.

45.0210 Detention and shelter-Hearing-Time limits restriction.

(a) A child in need of supervision or neglected or dependent who must be taken from his home shall be given temporary care in a shelter facility and shall not be placed in detention.

(b) When a child is placed in a detention facility or in a shelter facility, the law enforcement official taking the child into custody shall promptly notify the Court and its designee. He shall also notify a parent or legal guardian or, if a parent or legal guardian cannot be located within the Territory, the person with whom the child has been residing and inform him of the right to a prompt hearing to determine whether the child is to be detained further. The Court shall hold the detention hearing with 48 hours, excluding Saturdays, Sundays, and court holidays, unless waived in writing by the child's attorney, parent, guardian, or an adult person with whom the child has been residing.

(c) (1) No child shall be held in a detention or shelter facility longer than 48 hours, excluding Saturdays, Sundays, and Court holidays, unless a petition has been filed or the Court determines that it would be contrary to the welfare of the child or of the community to release the child from detention. The Court shall make provisions so that either a judge or referee is available to set bond 7 days a week.

(2) No child taken to a detention or shelter facility under 45.0202 through 45.0207 as the result of an allegedly delinquent act which would constitute a felony if committed by an adult shall be released from the facility if a law enforcement agency has requested that a detention hearing be held to determine whether the child's immediate welfare or the protection of the community requires that he be detained. The child may not afterward be released from detention except after a hearing, reasonable advance notice of which has been given to the Attorney General, alleging new circumstances concerning the further detention of the child.

(3) When, following a detention hearing as provided for by paragraph (2), the Court orders further detention of a child, a petition alleging the child to be delinquent shall be filed with the Court without unnecessary delay if one has not been previously filed, and the child shall be held in detention pending a hearing on the petition.

(d) The Court may at any time order the release of any child, except children being held under paragraph (c)(2) and (c)(3), from detention or shelter care without holding a hearing, either without restriction or upon written promise of the parent, guardian, or legal custodian to bring the child to the Court at a time set or to be set by the Court.

(e)(1) After making a reasonable effort to obtain the consent of the parent, guardian, or other legal custodian, the Court may authorize or consent to medical, surgical, or dental treatment or care for a child placed in detention or shelter care.

(2) When the Court finds that emergency medical, surgical, or dental treatment is required for a child placed in detention or shelter care, it may authorize such treatment or care if the parents, guardian, or legal custodian are not immediately available.

(f)(1) No child under 18 years of age may be detained in jail, lockup, or other place used for the confinement of adult offenders or persons charged with crime.

(2) The official in charge of a jail or other facility for the detention of adult offenders or persons charged with crime shall inform the Court immediately when a child who is or appears to be under 18 years of age is received at the facility.

(g) Nothing in this section shall be construed as denying a child the right to bail.

History: 1980, PL 16-71 § 1

Research Guide: CRS 19-2-103, 21 ASC 2905.

45.0215 Search warrants for the protection of children.

(a) A search warrant may be issued by the Court to search any place for the recovery of any child within the jurisdiction of the Court believed to be a delinquent child, a child in need of supervision, or a neglected or dependent child.

(b) The warrant shall be issued only on the conditions that the application for the warrant shall:

(1) be in writing and supported by affidavit sworn to or affirmed before the Court;

(2) name or describe with particularity the child sought;

(3) state that the child is believed to be a delinquent child, a child in need of supervision, or a neglected or dependent child and the reasons upon which that belief is based;

(4) state the address or legal description of the place to be searched; and

(5) state the reasons why it is necessary to proceed under this section instead of proceeding under 45.0301 through 45.0304 and 45.0315.

(c) If the Court is satisfied that grounds for the application exist or that there is probable cause to believe that they exist, it issues a search warrant identifying by name or describing with particularity the child sought and the place to be searched for the child.

(d) The search warrant is directed to any officer authorized by law to execute it.

(e) The warrant states the grounds or probable cause for its issuance and the names of the persons whose affidavits have been taken in support of it.

(f) The warrant is served in the daytime unless the application for the warrant alleges that it is necessary to conduct the search at some other time, in which case the Court may so direct.

(g) A copy of the warrant, the application for it and the supporting affidavit shall be served upon the person in possession of the place to be searched and where the child is to be sought.

(h) If the child is found, the child may be taken into custody in conformance with 45.0201.

(i) The warrant is returned to the issuing Court.

History: 1980, PL 16-71 § 1.

Research Guide: CRS 19-2-104.

Chapter 03

PETITION-ADJUDICATION-DISPOSITION

Sections:

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- 45.0302 Referral to court-Preliminary investigation.**
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Research Guide: Following each section of this chapter appear the various codes, and their sections, upon which the juvenile justice provisions were based. The following abbreviations apply

ASC—American Samoa Code.

CRS—Colorado Revised Statutes (1 973).

45.0301 Referral to Attorney General-Petition.

(a) Whenever it appears to a law enforcement officer or any other person that a child is or appears to be within the Court's jurisdiction, as under paragraph (a)(1) of 45.0115, the law enforcement officer or other person may refer the matter conferring or appearing to confer jurisdiction to the Attorney General who determines whether the interests of the child or of the community require that further action be taken.

(b) If the Attorney General determines that the interests of the child or of the community require that further action be taken, he may file a petition in delinquency on the form specified in 45.0310, which shall be accepted by the Court.

(c) If the Attorney General is unable to determine whether the interests of the child or of the community require that further action be taken he may refer the matter to the juvenile probation officer, the Department of Human and Social Services, or other agency designated by the court for a preliminary investigation and recommendations as to filing a petition under paragraph (a)(1) of 45.0115 or as to initiating an informal adjustment under paragraphs (3) of 45.0302 and 45.0303.

(d) After the filing of a petition alleging that the child is within the Court's jurisdiction, as provided in paragraph (a)(1) of 45.0115, the Court may conduct a preliminary hearing to determine if there is probable cause to believe that the facts alleged in the petition bring the child within the Court's jurisdiction.

History: 1980, PL 16-71 § 1; amd 2014, PL 33-10 § 2.

Research Guide: CRS 19-3-101.

45.0302 Referral to court-Preliminary investigation.

Whenever it appears to a law enforcement officer or other person that a child is or appears to be within the Court's jurisdiction, as provided in paragraph (a)(2) or (a)(3) of 45.0115, the law enforcement officer or other person may refer the matter to the Court, which shall have a preliminary investigation made to determine whether the interests of the child or of the community require that further action be taken. This investigation shall be made by the juvenile probation officer, the Department of Human and Social Services, or any other agency designated by the Court. On the basis of the preliminary investigation, the Court may:

(1) decide that no further action is required, either in the interests of the public or of the child;

(2) authorize a petition to be filed; or

(3) make whatever informal adjustment is practicable without a petition if:

(A) the child and his parents, guardian, or other legal custodian were informed of their constitutional and legal rights including being represented by counsel at every stage of the proceedings;

(B) the facts are admitted and establish prima facie jurisdiction, except that the admission shall not be used in evidence if a petition is filed; and

(C) written consent is obtained from the parents, guardian, or other legal custodian and also from the child, if of sufficient age and understanding.

History: 1980, PL 16-71 § 1; amd 2014, PL 33-10 § 3.

Research Guide: CRS 19-3-101.

45.0303 Informal adjustment-Time limit.

(a) Efforts to effect informal adjustment may extend no longer than 6 months.

(b) In any informal adjustment, the Court for its designated agency shall, during the period of informal adjustment, periodically counsel and guide the child and his parents, guardian, or legal custodian in a constructive manner designed to promote rehabilitation using the methods as provided in subsection (c) of 45.0502 as well as requiring any 1 or more of the conditions of probation that are authorized under 46.2205.

(c) No child may be handled by informal adjustment where the child referred to the Court by any person has had any sustained petition for delinquency in the preceding 12 months or has been handled by informal adjustment for a delinquent act in the preceding 12 months.

History: 1980, PL 16-71 § 1.

Research Guide: CRS 19-3-101.

45.0304 Petition for protection from child abuse.

(a) Upon receipt of a report filed by a law enforcement agency, an employee of a public or private school, or any person required to report under 45.2002, indicating that a child has suffered abuse as defined in subsection (a) of 45.2001 and that the best interest of the child require that he be protected from risk of further abuse, the Court shall then authorize and may order the filing of a petition.

(b) Upon receipt of a report, as described in subsection (a), from any person other than those specified in subsection (a), the Court, after the investigation as may be reasonable tinder the circumstances. may authorize and may order the filing of a petition.

History: 1980, PL 16-71 § 1

Research Guide: CRS 19-3-101.

45.0310 Form and content of petition.

(a) The petition and all subsequent court documents in any proceedings brought under paragraph (a)(1), (a)(2), or (a)(3) of 45.0115 shall be entitled “The People of the Territory of American Samoa in the Interest of. , a child (or children), and ConcerningRespondent”. The petition shall be verified, and the statements in the petition may be made upon information and belief.

(b) The petition sets forth plainly the facts which bring the child within the court’s jurisdiction. If the petition alleges that the child is delinquent, it cites the law which the child is alleged to have violated. The petition also states the name, age, and residence of the child and the names and residences of his parents, guardian, or other legal custodian or of his nearest known relative if no parent, guardian, or other legal custodian is known.

History: 1980, PL 16-71 § 1.

Research Guide: CRS 19-3-102.

45.0311 Summons-Issuance.

After a petition has been filed, the court promptly issues a summons reciting briefly the substance of the petition. The summons also contains a statement, when appropriate, that the termination of parental rights is a possible remedy under the proceedings and sets forth the constitutional and legal rights of the child, his parents or guardian, or any other respondent, including the right to have an attorney present at the hearing on the petition.

History: 1980, PL 16-71 § 1.

Research Guide: CRS 19-3-103.

45.0312 Summons-Not to issue when.

No summons may issue to any respondent who appears voluntarily, or who waives service, or who has promised in writing to appear at the hearing as provided in 45.0202 through 45.0207 and 45.0210 but that person is provided with a copy of the petition and summons upon appearance or request.

History: 1980, PL 16-71 § 1

Research Guide: CRS 19-3-103.

45.0313 Summons-Requirement for appearance.

The summons requires the person or persons having the physical custody of the child to appear and to bring the child before the court at a time and place stated. If the person or persons so summoned are not the parents or guardian of the child, then summons is also issued to the parents or guardian, or both, notifying them of the pendency of the case and of the time and place set for hearing.

History: 1980, PL 16-71 § 1.

Research Guide: CRS 19-3-103.

45.0314 Summons-Additional respondents-Attendance.

The court on its own motion or on the motion of any party may join as a respondent or require the appearance of any person it considers necessary to the action and authorize the issuance of a summons directed to that person. Any party to the action may request the issuance of compulsory process by the Court requiring the attendance of witnesses on his own behalf or on behalf of the child.

History: 1980, PL 16-71 § 1.

Research Guide: CRS 19-3-103.

45.0315 Summons-Custody of child required when.

If it appears that the welfare of the child or of the public requires that the child be taken into custody, the Court may, by endorsement upon the summons, direct that the person serving the summons take the child into custody at once.

History: 1980, PL 16-71 § 1.

Research Guide: CRS 19-3-103.

45.0316 Summons-Payment of travel expenses.

The Court may authorize the payment of necessary travel expenses incurred by persons summoned or otherwise required to appear.

History:1980, PL 16-71 § 1.

Research Guide: CRS 19-3-10 3.

45.0317 Summons-Personal service.

Summons shall be served personally. under Rules 4 and 5 of the Federal Rules of Civil Procedure. If personal service is used, it shall be sufficient to confer jurisdiction if service is effected not less than 2 days before the time fixed in the summons for the appearance of the person served, except that personal service shall be effected not less than 5 days prior to the time set for a hearing concerning a dependent or neglected child.

History:1980, PL 16-71 § 1.

Research Guide: CRS 19-3-103.

45.0318 Summons.

If the parents, guardian, or other legal custodian of the child required to be summoned under 45.0313 cannot be found within the territory, the fact of the child's presence in the territory shall confer jurisdiction on the court as to any absent parent, guardian, or legal custodian if due notice has been given in the following manner:

(a) When the residence of the person to be served outside the territory is known, a copy of the summons and petition shall be sent by certified mail with postage prepaid to the person at his place of residence with a return receipt requested. Service of summons is considered complete within 5 days after return of the requested receipt.

(b) When the person to be served has no residence within American Samoa, his place of residence is not known, or when he cannot be found within the territory after due diligence, service may be by publication in a newspaper of general circulation in American Samoa or by any other means authorized by the court.

History:1980, PL 16-71 § 1; 1990, PL 21-33.

Research Guide: CRS 19-3-103.

45.0325 Contempt-Warrant.

(a) Any person summoned or required to appear as under 45.0311 through 45.0318 who has acknowledged service and fails to appear without reasonable cause may be proceeded against for contempt of court.

(b) If after reasonable effort the summons cannot be served or if the welfare of the child requires that he be brought immediately into the custody of the court, a bench warrant may be issued for the parents, guardian, or other legal custodian, or for the child.

(c) When a parent or other person who signed a written promise to appear and bring the child to court under 45.0202 through 45.0207 and 45.0210 or who has waived or acknowledged service fails to appear with the child on the date set by the court, a bench warrant may be issued for the parent or other person, or the child, or both.

History:1980, PL 16-71 § 1.

Research Guide: CRS 19-3-104, 5 ASC 403, 5 ASC 404.

45.0326 Appointment of guardian ad litem.

(a) The court may appoint a guardian ad litem to protect the interest of a child in proceedings under paragraph (a)(1), (a)(2) or (c)(1) of 45.0115 when:

(1) no parent, guardian, legal custodian, or relative of the child appears at the first or any subsequent hearing in the case; or

(2) the court finds that there may be a conflict of interest between the child and his parent, guardian, or other legal custodian; or

(3) the court finds that it is in the child's interest and necessary for his welfare, whether or not a parent, guardian, or other legal custodian is present.

(b) The court shall appoint a guardian ad litem for any parent in proceedings under paragraph (a)(3) or (a)(5) of 45.0115 who has been adjudicated as mentally ill by a court of competent jurisdiction or is developmentally disabled, except that if a conservator has been appointed, the conservator may serve as the guardian ad litem. If the conservator does not serve as guardian ad litem, he shall be informed that a guardian ad litem has been appointed.

(c) At the time any child first appears in court, if it is determined that he has no guardian of his person, the court shall appoint a guardian of the person of the child before proceeding with the matter.

(d) In all proceedings brought for the protection of a child suffering from abuse or nonaccidental injury, following a report made under 45.2010, a guardian ad litem shall be appointed for this child. The guardian shall have the powers and duties specified in 45.2017.

History: 1980, PL 16-71 § 1.

Research Guide: CRS 19-3-105, 21 ASC 2911.

45.0330 Adjudicatory hearing-Consideration of evidence.

At the adjudicatory hearing, which is conducted as provided in 45.0124, the court considers whether the allegations of the petition are supported by evidence beyond a reasonable doubt in cases concerning delinquent children or children in need of supervision or by a preponderance of the evidence in cases concerning neglected or dependent children; except that jurisdictional matters of the age and residence of the child is considered admitted by or on behalf of the child unless specifically denied prior to the adjudicatory hearing.

History: 1980, PL 16-71 § 1.

Research Guide: CRS 19-3-106.

45.0331 Adjudicatory hearing-Consideration of additional evidence-Amendment of petition.

(a) When it appears that the evidence presented at the hearing as provided in 45.0330 discloses facts not alleged in the petition, the court may proceed immediately to consider the additional or different matters raised by the evidence if the parties consent.

(b) In that event, the court, on the motion of any interested party or on its own motion, shall order the petition to be amended to conform to the evidence.

(c) If the amendment results in a substantial departure from the original allegations in

the petition, the court shall continue the hearing on the motion of any interested party, or the court may grant a continuance on its own motion if it finds it to be in the best interests of the child or any other party to the proceeding.

(d) If it appears from the evidence that the child may be mentally ill or developmentally disabled, subsections (a) to (c) do not apply, and the court shall proceed under 45.0336.

History: 1980, PL 16-71 § 1.

Research Guide: CRS 19-3-106.

45.0332 Adjudicatory hearing-Continuation.

(a) After making a finding as provided by under subsection (a) of 45.0335, but before making an adjudication, the court may continue the hearing as provided in 45.0330, from time to time, allowing the child to remain in his own home or in the temporary custody of another person or agency subject to conditions of conduct and of visitation or supervision by a juvenile officer as the court may prescribe, if:

(1) consent is given by the child and his parent, guardian, or other legal custodian after being fully informed by the court of their rights in the proceeding, including their right to have an adjudication made either dismissing or sustaining the petition; and

(2) the continuation extends no longer than 6 months without review by the court.

(b) Upon review the court may continue the case for an additional period not to exceed 6 months, after which the petition shall either be dismissed or sustained.

History: 1980, PL 16-71 § 1.

Research Guide: CRS 19-3-106.

45.0333 Adjudicatory hearing-Allegation of delinquent child.

When the petition alleges a child 14 years of age or older to be a delinquent child as defined by subsection (9) of 45.0103, by virtue of having committed an act which would constitute a felony if committed by an adult, the court shall:

(1) proceed as otherwise provided in 45.0330 through 45.0335; or

(2) upon request of the Attorney General, continue the case for further investigation to determine whether the court should certify the child for criminal proceedings as an adult under subsection (d) of 45.0115, in which event the court shall advise the child and his parents, guardian, or legal custodian of the possible consequences of the certification and all constitutional and legal rights in connection with it.

History: 1980, PL 16-71 § 1.

Research Guide: CRS 19-3-106.

45.0334 Adjudicatory hearing-Dismissal of petition.

When the court finds that the allegations of the petition are not supported by evidence beyond a reasonable doubt in cases concerning delinquent children or children in need of supervision or by a preponderance of the evidence in cases concerning neglected or dependent children, the court shall order the petition dismissed and the child discharged from any detention or restriction previously ordered. His parents, guardian, or other legal custodian shall also be discharged from any restriction or other previous temporary order.

History: 1980, PL 16-71 § 1.

Research Guide: CRS 19-3-106.

45.0335 Adjudicatory hearing-Petition sustained.

(a) When the court finds that the allegations of the petition are supported by evidence beyond a reasonable doubt in cases concerning delinquent children or children in need of supervision or by a preponderance of the evidence in cases concerning neglected or dependent children, except when the case is continued as provided in subsection (a) of 45.0332, the Court shall sustain the petition and shall make an order of adjudication setting forth whether the child is delinquent, in need of supervision, or neglected or dependent. In cases concerning neglected or dependent children, evidence that child abuse or nonaccidental injury has occurred constitutes prima facie evidence that the child is neglected or dependent and the evidence sufficient to support an adjudication under 45.0330 to 45.0335.

(b) The Court then holds the dispositional hearing, but the hearing may be continued on the motion of any interested party or on the motion of the Court.

History: 1980, PL 16-71, § 1.

Research Guide: CRS 19-3-106.

45.0336 Mentally ill or developmentally disabled child-Procedure.

(a) If it appears from the evidence presented at an adjudicatory hearing or otherwise that the child may be mentally ill or developmentally disabled, the Court orders that the child be examined by a physician, psychiatrist, or psychologist and may place the child in a suitable facility for the purpose of examination.

(b) If the report of the examination made under subsection (a) states that the child is mentally ill to the extent that short-term or long-term hospitalization or institutional confinement and treatment is required, the Court may order the treatment or confinement.

(c) The Court dismisses the original petition when a child who has been ordered to receive treatment is no longer receiving treatment.

(d) The Court sets a time for resuming the hearing on the original petition when:

(1) the report of the examination made under subsection (a) states that the child is not mentally ill to the extent that short-term or long-term hospitalization or institutional confinement and treatment are required;

(2) the report of the examination made under subsection (a) states that the child is developmentally disabled but not mentally ill; or

(3) the child is found not to be mentally ill.

History: 1980, PL 16-71 § 1.

Research Guide: CRS -3-107.

45.0340 Certification of child for criminal proceedings as an adult.

(a) Under subsection (c) of 45.0115, at the certification hearing, the Court considers:

(1) whether there is probable cause to believe that the child has committed an act for which he may be certified for criminal proceedings as an adult under subsection (c) of 45.0115, and the introductory portion and paragraph (2) of 45.0333; and

(2) whether the interest of the child or of the community would be better served if the

child were certified for criminal proceedings as an adult.

History: 1980, PL 16-71 § 1.

Research Guide: CRS 19-3-108.

45.0341 Certification hearing-Consideration of factors.

(a) The hearing pursuant to 45.0340 is conducted under 45.0124 and the Court makes certain that the child and his parents, guardian, or legal custodian have been fully informed of their right to be represented by counsel under 45.0120 to 45.0123.

(b) In considering whether or not to certify the child for criminal proceedings as an adult, the Court considers the following factors:

(1) the seriousness of the offense and whether the protection of the community requires isolation of the child beyond that afforded by juvenile facilities;

(2) whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner;

(3) whether the alleged offense was against persons or property, greater weight being given to offenses against persons;

(4) the maturity of the child as determined by considerations of his home, environment, emotional attitude, and pattern of living;

(5) the record and previous history of the child; and

(6) the likelihood of rehabilitation of the child by use of juvenile facilities available to the court.

(c) The amount of weight to be given to each of the factors listed in subsection (b) is discretionary with the Court, except that a record of 2 or more previously sustained petitions for acts which would constitute felonies if committed by an adult establishes prima facie evidence that not to certify the child for criminal proceedings as an adult would be contrary to the best interests of the child or of the community.

(d) The insufficiency of evidence pertaining to any 1 or more of the factors listed in subsection (b) is not determinative in and of itself of the issue of certification.

History: 1980, PL 16-71 § 1.

Research Guide: CRS 19-3-108.

45.0342 Certification hearing-Consideration of written reports.

Written reports and other materials relating to the child's mental, physical, educational, and social history may be considered by the Court in a hearing as provided in 45.0340, but the Court, if so requested by the child, his parent or guardian, or other interested party, shall require the person or agency preparing the report and other material to appear and be subject to both direct and cross-examination.

History: 1980, PL 16-71 § 1.

Research Guide: CRS 19-3-108.

45.0343 Certification hearing-Order for proceedings as an adult.

(a) In a hearing as provided in 45.0340, if the court finds that it should certify the child for criminal proceedings as an adult, it shall enter an order to that effect; except, that, the order shall be null and void if the Attorney General fails to file any information

in the Court within 5 days of issuance of the written order of certification, exclusive of Saturdays, Sundays, and Court holidays. Upon failure of the Attorney General to file any information, the Court retains jurisdiction and proceeds under 45.0330 to 45.0335.

(b) As a condition of the certification, the Court in its discretion may provide that a child continues to be held in detention pending the filing of any information in the Court. Where the child has made bond in proceedings in the Court, it continues in full force and effect unless modified by order of the Court.

History: 1980, PL 16-71 § 1.

45.0344 Certification hearing-Procedure under 45.0330 to 45.0335.

In a hearing as provided in 45.0340 if the Court finds that it is in the best interests of the child and of the community not to certify the child for criminal proceedings as an adult, then it proceeds with the adjudicatory hearing under 45.0330 to 45.0335.

History: 1980, PL 16-71 § 1.

Research Guide: CRS 19-3-108.

45.0345 Disposition hearing.

(a) After making an order of adjudication, the Court hears evidence on the question of the proper disposition best serving the interests of the child and the public. The evidence includes, but is not limited to, the social study and other reports under 45.0130.

(b) The Court may have the child examined by a physician, psychiatrist, or psychologist, and the Court may place the child in a suitable facility for this purpose.

(c) (1) The Court may continue the dispositional hearing, either on its own motion or on the motion of any interested party, for a reasonable period to receive reports or other evidence, but the Court shall continue the hearing for good cause on the motion of any interested party in any case where the termination of parental rights is a possible remedy.

(2) If the hearing is continued, the Court shall make an appropriate order for detention of the child or for his release into the custody of his parents, guardian, or other responsible person or agency under conditions of supervision as the Court may impose during the continuance.

(3) In scheduling investigations and hearings, the Court gives priority to proceedings concerning a child who is in detention or who has otherwise been removed from his home before an order of disposition has been made.

History: 1980, PL 16-71 § 1.

Research Guide: CRS 19-3-109.

45.0346 Order of protection.

(a) The Court may make an order of protection in assistance of or as a condition of any decree of disposition authorized by this chapter. The order of protection may set forth reasonable conditions or behavior to be observed for a specified period by the parent, guardian, or any other person who is party to proceedings brought under paragraph (a)(1), (a)(2), or (a)(3) of 45.0115.

(b) The order of protection may require a person to:

(1) stay away from a child or his residence;

(2) permit a parent to visit a child at stated periods;

(3) abstain from offensive conduct against a child, his parent or parents, guardian, or any other person to whom legal custody of a child has been given;

(4) give proper attention to the care of the home;

(5) cooperate in good faith with an agency:

(A) which has been given legal custody of a child;

(B) which is providing protective supervision of a child by Court order; or

(C) which the child has been referred by the Court;

(6) refrain from acts of commission or omission that tend to make a home an improper place for a child; or

(7) perform any legal obligation of support.

(c) After notice and opportunity for a hearing is given to a person subject to an order of protection, the order may be terminated, modified, or extended for a specified period of time if the Court finds that the best interests of the child and the public will be served.

(d) A person failing to comply with an order of protection without good cause may be found in contempt of court.

History: 1980, PL 16-71 §

Research Guide: CRS 19-3-110, 5 ASC 403, 5 ASC 404.

45.0350 Delinquent child-Disposition.

(a) If a child has been adjudicated as being delinquent, the Court shall enter a decree of disposition containing 1 or more of the following provisions which the Court finds appropriate:

(1) The Court may make any disposition, or combination of dispositions when appropriate, under subsection (a) of 45.0352, except that any delinquent child committed to the Corrections Bureau may be placed in any training school or any other facility, or other disposition may be made, which the bureau may determine as provided by law;

(2) The Court may commit a person 18 years of age or older to the Bureau if he is adjudicated delinquent for an act committed prior to his 18th birthday or upon revocation of probation;

(3) The Court may sentence a person who is 18 years of age or older on the date of a dispositional hearing to the Territorial Correctional Facility for a period not to exceed an aggregate total of 180 days, which may be served consecutively or in intervals, if he is adjudicated delinquent for an act committed prior to his 18th birthday;

(4) The Court may impose a fine of not more than \$300.

(b) The Court may grant a new hearing under 45.0362.

History: 1980, PL 16-71 § 1

Research Guide: CRS 19-3-113.

45.0352 Child in need of supervision-Disposition.

(a) When a child has been adjudicated as being in need of supervision, the Court enters a decree of disposition containing 1 or more of the following provisions which the Court finds appropriate:

(1) The Court may place the child on probation or under protective supervision in the legal custody of 1 or both parents or the guardian under conditions the Court may impose.

(2) The Court may place the child in the legal custody of a relative or other suitable

person under conditions the Court may impose, which may include placing the child on probation or under protective supervision.

(3) The Court may require as a condition of probation that the child report for assignment to a supervised work program or place the child in a child care facility which shall provide a supervised work program, if:

(A) the child is not deprived of the schooling which is appropriate to his age, needs, and specific rehabilitative goals;

(B) the supervised work program is of a constructive nature designed to promote rehabilitation, is appropriate to the age level and physical ability of the child, and is combined with counseling from a juvenile officer or other guidance personnel; or

(C) the supervised work program assignment is made for a period of time consistent with the child's best interest, but not exceeding 180 days.

(4) The Court may place legal custody in the Department of Human and Social Services, or a child placement agency for placement in a family care home or child care facility, or it may place the child in a child care center.

(5) The Court may order that the child be examined or treated by a physician, surgeon, psychiatrist, or psychologist, or that he receive other special care, and may place the child in a suitable facility for those purposes.

(6) The Court may require the child to pay for any damage done to persons or property, upon conditions the Court may consider best when the payment can be enforced without serious hardship or injustice to the child.

(7) Court ordered placement for a child committed under this section shall not exceed 2 years; except, that the committing Court may renew the placement for an additional period not to exceed 2 years, upon recommendation of the placement agency.

(8) When the placement agency determines that a child committed under this section should be released, it shall notify the committing Court in writing, setting forth the reasons why the child should be released.

(9) Upon receipt of that notification, the Court may:

(A) enter an order releasing the child from commitment to the placement agency, either unconditionally or under conditions the Court may impose;

(B) enter an order releasing the child from the jurisdiction of the Court;

(C) enter an order continuing the commitment of the child;

(D) hold a hearing on the request for release after due notice has been given to all parties involved; or

(E) enter any combination of the orders included in subparagraphs (A) to (C) which the Court finds appropriate and which are not mutually exclusive.

(10) When the Court enters an order releasing the child from commitment to the placement agency, the agency immediately returns the child to the court.

History: 1980, PL 16-71 § 1; amd 2014, PL 33-10 § 4.

Research Guide: CRS 19-3-112.

45.0354 Neglected or dependent child-Disposition.

When a child has been adjudicated to be neglected or dependent, the Court shall enter a decree of disposition. When the decree does not terminate parental rights, it shall include 1 or more of the following provisions which the Court finds appropriate:

(a) The Court may place the child in the legal custody of 1 or both parents or the guardian, with or without protective supervision, under conditions the Court may impose,

under 45.0346.

(b) The Court may place the child in the legal custody of a relative or other suitable person, with or without protective supervision, under conditions the Court may impose, under 45.0346.

(c) The Court may place legal custody in a child placement agency for placement in a family care home, the Department of Human and Social Services, or other child care facility.

(d) The Court may order that the child be examined or treated by a physician, surgeon, psychiatrists, or psychologist or that he receive other special care and may place the child in a suitable facility for those purposes.

History:1980, PL 16-71 § 1; amd 2014, PL 33-10 § 5.

Research Guide: CRS 19-3-111.

45.0355 Neglected or dependent child-Termination of parental rights.

In a disposition as provided in 45.0354:

(a) The Court may enter a decree terminating all parental rights of 1 or both parents in the child when it finds that the best interests and welfare of the child so require.

(b) Upon the entry of a decree terminating the legal rights of both parents, of the sole surviving parent, or of the mother of a child born out of wedlock, the Court may:

(1) vest the Department of Human and Social Services or a child placement agency with the legal custody and guardianship of the person of a child for the purposes of placing the child for adoption; or

(2) make any other disposition provided under (a)(2), (3), or (4) above that the Court finds appropriate.

(c) Upon the entry of a decree terminating the parental rights of 1 parent, the Court may:

(1) leave the child in the legal custody of the other parent and discharge the proceedings; or

(2) make any other disposition under (a) above that the Court finds appropriate.

History:1980, PL 16-71 § 1; amd 2014, PL 33-10 § 6.

Research Guide: CRS 19-3-111.

45.0356 Neglected or dependent child-Surrender of custody.

When a child has been adjudicated neglected because he has been willfully abandoned by his parent or parents, the Court may enter a decree terminating parental rights in the child if it finds that the parent or parents having legal custody have surrendered physical custody for a period of at least 6 months and during this period have not manifested to the child or the person having physical custody a firm intention to resume physical custody or to make arrangements for the care of the child.

History:1980, PL 16-71 § 1.

Research Guide: CRS 19-3-111.

45.0357 Neglected or dependent child-Consideration of placement.

In placing the legal custody or guardianship of the person of a child with an individual or a private agency, the Court, in a disposition as provided in 45.0354, shall give primary

consideration to the welfare of the child, but shall take into consideration the religious preference of the child or his parents whenever practicable.

History: 1980, PL 16-71 § 1.

Research Guide: CRS 193-111.

45.0358 Neglected or dependent child-New hearing-Permanency of decree.

In a disposition as provided in 45.0354:

- (a) The Court may grant a new hearing as under 45.0362.
- (b) Unless there is an appeal from a decree terminating the rights of 1 or both parents, the decree terminates permanently the legal parent-child relationship and all the rights and duties, including residual parental rights and duties, of the parent or parents involved.

History: 1980, PL 16-71 § 1.

Research Guide: CRS 19-3-111.

45.0360 Commitment to corrections bureau.

(a) (1) When a child is committed to the Corrections Bureau, the Court, in a disposition as provided in 45.0354, transmits with the commitment order a copy of the petition, the order of adjudication, copies of the social study, any clinical or educational reports, and other information pertinent to the care and treatment of the child.

(2) The Bureau provides the Court with any information concerning a child committed to its care which the Court at any time may require.

(b) (1) A commitment of a child to the Bureau under 45.0350 is for an indeterminate period, but institutional placement may not exceed a total of 2 years as determined by the Bureau, except under paragraph (b)(3).

(2) The Bureau may petition the committing Court to extend the commitment for an additional period not to exceed 2 years. The petition sets forth the reasons why it would be in the best interests of the child or the public to extend the commitment. Upon filing the petition, the Court sets a hearing to determine whether the petition should be granted or denied and notifies all interested parties.

(3) Parole supervision of children committed to the Bureau under 45.0350 may not exceed 2 years as determined by the Parole Board, except under 45.1102.

(4) When it is brought to the attention of the Court that a child committed to the Bureau by the Court has been placed in an institution or other facility for a period exceeding 1 year without being considered for parole, the Court may request the Parole board to review the case.

History: 1980, PL 16-71 § 1.

Research Guide: CRS 19-3-114

45.0361 Legal custody-Guardianship.

(a) (1) Any individual, agency, or institution vested by the Court with legal custody of a child has the rights and duties defined under subsection (18) of 45.0103.

(2) Any individual, agency, or institution vested by the Court with the guardianship of the person of a child has the rights and duties defined in subsection (16) of 45.0103 except that no guardian of the person may consent to the adoption of a child unless that

authority is expressly given him by the Court.

(b) (1) If legal custody or guardianship of the person is vested in an agency or institution, the Court transmits, with the Court order, copies of the social study, any clinical reports, and other information concerning the care and treatment of the child.

(2) An individual, agency, or institution having legal custody or guardianship of the person of a child gives the Court any information concerning the child which the Court at any time may require.

(c) (1) Any agency other than the Bureau vested by the Court with legal custody of a child has the right, subject to the approval of the Court, to determine where and with whom the child shall live.

(2) No individual vested by the Court with legal custody of a child may remove the child from the Territory for more than 30 days without Court approval.

(d) (1) A decree vesting legal custody of a child in an individual, institution, or agency other than the Bureau is for an indeterminate period, not to exceed 2 years from the date it was entered. The decree is reviewed by the Court no later than 6 months after it is entered.

(2) The individual, institution, or agency vested with the legal custody of a child may petition the Court for renewal of the decree. The Court, after notice and hearing, may renew the decree for an additional period as the Court may determine, if it finds the renewal to be in the best interests of the child. The findings of the Court and the reasons for them shall be entered with the order renewing or denying renewal of the decree.

(e) No legal custodian or guardian of the person may be removed without his consent until given notice and an opportunity to be heard by the Court if he requests it.

History: 1980, PL 16-71 § 1.

Research Guide: CRS 19-3-115.

45.0362 New hearing authorized.

(a) A parent, guardian, custodian, or next friend of any child adjudicated under this chapter, or any person affected by a decree in a proceeding under this chapter, may petition the Court for a new hearing on the grounds specified in Rule 59 (a) of the Federal Rules of Civil Procedure.

(b) If it appears to the Court that the motion should be granted, it orders a new hearing and makes a disposition of the case as warranted by all the facts and circumstances and the best interests of the child.

History: 1980, PL 16-71 § 1.

Research Guide: CRS 19-3-116.

45.0363 Probation-Terms-Release-Revocation.

(a) The terms and conditions of probation are specified by the Court. Each child placed on probation is given a Written statement of the terms and conditions of his probation and has the terms and conditions fully explained to him.

(b) (1) The Court reviews the terms and conditions of probation and the progress of each child placed on probation at least once every 6 months.

(2) The Court may release a child from probation or modify the terms and conditions of his probation at any time, but any child who has complied satisfactorily with the terms

and conditions of his probation for a period of 2 years is released from probation and the jurisdiction of the Court is terminated.

(c) (1) When it is alleged that a child has violated the terms and conditions of his probation, the Court shall set a hearing on the alleged violation and gives notice to the child and his parents, guardian or other legal custodian, and any other parties to the proceeding as under 45.0311 to 45.0318.

(2) The child, his parents, guardian, or other legal custodian, are given a written statement concerning the alleged violation and has the right to be represented by counsel at the hearing, and are entitled to the issuance of compulsory process for the attendance of witnesses, under 45.0314.

(3) When the child has been taken into custody because of the alleged violation, 45.0202 to 45.0207 and 45.0210 apply.

(4) (A) The hearing on the alleged violation is conducted under 45.0124.

(B) If the Court finds that the child violated the terms and conditions of probation, it may modify the terms and conditions of probation, revoke probation, or take any other action permitted by this chapter which is in the best interests of the child and the public; except that no child under 45.0352 is committed to the Bureau.

(C) If the Court finds that the child did not violate the terms and conditions of his probation as alleged, it dismisses the proceedings and continues the child on probation under the terms and conditions previously prescribed.

(5) If the Court revokes the probation of a person 18 years of age, or older in addition to other action permitted by this chapter, the Court may sentence him to the Territorial Correctional Facility for a period not to exceed 3 months during which he may be released during the day for school attendance, job training, or employment as ordered by the Court.

History: 1980, PL 16-71 § 1.

Research Guide: CRS 19-3-117.

45.0364 Continuing jurisdiction.

Except as otherwise provided in this chapter, the jurisdiction of the Court over any child adjudicated as delinquent, in need of supervision, or neglected or dependent continues until he becomes 21 years of age unless terminated by Court order.

History: 1980, PL 16-71 § 1.

Research Guide: CRS 19-3-118.

45.0365 Adult cases-Penalty.

Any adult who:

(1) induces, aids, or encourages a child to violate any Federal, State, or Territorial law, or ordinance, or any Court order; or

(2) who abuses, ill-treats, neglects, or abandons a child, upon conviction, is guilty of:

(a) in the case where the violation is of a Territorial law classified as a felony, the same degree of felony as the law violated;

(b) in all other cases, a class A misdemeanor.

History: 1980, PL 16-71 § 1; 2004, PL 28-9.

Chapter 04

RELINQUISHMENT AND ADOPTION

Sections:

- 45.0401 Termination of parental rights in a child.**
- 45.0402 Relinquishment procedure-Petition-Hearings.**
- 45.0403 Final order of relinquishment.**
- 45.0404 Records-Separate dockets.**
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- 45.0421 Petition-Written reports.**
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- 45.0423 Legal effects of final decree.**
- 45.0424 Copies of order of adoption-To whom given.**
- 45.0430 Compensation for placing child prohibited.**
- 45.0431 Limitation on annulment of adoption.**
- 45.0432 Long term guardianships for minor children.**

Research Guide: Following each section of this chapter appear the various codes, and their sections, upon which the juvenile justice provisions were based. The following abbreviations apply:

ASC—American Samoa Code.

CRS—Colorado Revised Statutes (1973).

45.0401 Termination of parental rights in a child.

(a) The Court may, upon petition, terminate all rights of a parent or parents in a child in:

(1) proceedings under paragraph (a)(3) of 45.0115 by which the Court has determined the child to be neglected by one or both parents or to be dependent; or

(2) proceedings under paragraph (a)(5) of 45.0115 by which a parent or parents jointly or either of them severally voluntarily relinquish all the parental rights which they or each of them may have in a child, natural or adopted.

(b) No parent may relinquish his parental rights in a child other than in accordance with the provisions of this chapter.

History:1980, PL 16-71 § 1.

Case Notes:

Where grounds for petition to terminate parental rights were simply that the child's grandmother had taken care of her since birth, the petition failed to show circumstances of a "neglected or dependent child" as required by territorial statute. A.S.C.A. §§ 45.0401(a)(1) & (a)(3). In re A Minor Child, 12 A.S.R.2d 15 (1989).

For parental rights to be voluntarily relinquished, the court must be satisfied that the relinquishing parent was counseled and fully advised of the consequences and that relinquishment best serves the interests of all concerned parties. A.S.C.A. §§ 45.0401(a)(2), (d), & (f). In re A Minor Child, 12 A.S.R.2d 15 (1989).

Proceedings to terminate parental rights upon ground that the children are neglected and dependent are adversarial in nature, in contrast to relinquishment proceedings which are voluntary. A.S.C.A. §§ 45.0115, 45.0103, 45.0401. *In re Two Minor Children*, 8 A.S.R.2d 75 (1988).

Research Guide: CRS 194-101.

45.0402 Relinquishment procedure-Petition-Hearings.

(a) Any parent desiring to relinquish his child petitions the Court upon forms supplied by the Court, giving the following information: name of both natural parents, if known; name of the child, if named; ages of all parties concerned; race and religion of both natural parents, if known; and why relinquishment is desired.

(b) Upon receipt of the petition, the Court sets it for hearing.

(c) The parental rights of a parent may not be terminated by relinquishment proceedings unless the parent join in the petition.

(d) The Court does not issue an order of relinquishment until it is satisfied that the relinquishing parent has been counseled and fully advised of the consequences of his act.

(e) If the Court believes after the hearing that it is in the best interests of the parties concerned that no relinquishment be granted, the Court enters an order dismissing the action.

(f) If the Court is satisfied after the hearing that the relinquishing parent or parents have been counseled under (d) above and that the relinquishment would best serve the interests of all parties concerned, it enters an order of relinquishment.

(g) If the Court is not satisfied that the relinquishing parents have been offered proper and sufficient counsel and advice it continues the matter for a time the Court considers necessary.

History: 1980, PL 16-71 § 1.

Case Notes:

When natural parents desire to relinquish their own rights in order that some other person can adopt their child, the statutory procedure is a voluntary relinquishment of parental rights. A.S.C.A. § 45.0402. *In re Three Minor Children* (Mem.), 3 A.S.R.2d 4 (1986).

The territorial statute dealing with voluntary relinquishment of parental rights requires that the natural parents be present in court. A.S.C.A. § 45.0402. *In re Three Minor Children* (Mem.), 3 A.S.R.2d 4 (1986).

When purpose of action for relinquishment of parental rights was to allow the child to live with his grandmother, purpose could be achieved without the necessity of formal relinquishment and adoption, and the grandmother proposing to adopt was less well-equipped than natural parents to support the child throughout the period of his minority, petition to relinquish would be denied. A.S.C.A. § 45.0402. *In re A Minor Child*, 6 A.S.R.2d 123 (1987).

Court will not order relinquishment of parental rights until it is satisfied that the relinquishing parent has been counseled and fully advised of the consequences of relinquishment. A.S.C.A. § 45.0402(d). *In re Two Minor Children*, 8 A.S.R.2d 75 (1988).

In a petition to relinquish parental rights to a child, a court is required to first consider the best interest and welfare of the child, as well as the best interest of all concerned. A.S.C.A. §§ 45.0102, 45.0402. *In re Two Minor Children*, 19 A.S.R.2d 32 (1991).

A petition to relinquish parental rights to a child is not ordinarily favored unless the evidence is clear and convincing that the prospective adopting parents are in a better position to secure the best interest and welfare of the minor. A.S.C.A. §§ 45.0102, 45.0402. *In re Two Minor Children*, 19 A.S.R.2d 32 (1991).

Petitions of healthy, young, natural parents to relinquish their parental rights and obligations in favor of elderly relatives have been consistently rejected by the High Court. A.S.C.A. §§ 45.0102, 45.0402. *In re A Minor Child*, 19 A.S.R.2d 97 (1991).

Relinquishment of parental rights must be predicated on the best interests of all concerned, but disruption of natural family relationships may not be in the children's long-term best interests. A.S.C.A. § 45.0402(e). *In re Three Minor Children*, 23 A.S.R.2d 113 (1993).

Relinquishment of parental rights must be based in very substantial part on the best interests of all persons concerned; as such, the court refused to legally sever a minor's relationships with his natural family to have him raised by an older, single parent who is in poor health. A.S.C.A. § 45.0402(e). *In re a Minor Child*, 23 A.S.R.2d 129 (1993).

When natural parents desire to relinquish their own rights in order that some other person can adopt their child, the statutory procedure is a voluntary relinquishment of parental rights. A.S.C.A. § 45.0402. *In re Three Minor Children* (Mem.), 3 A.S.R.2d 4 (1986).

Research Guide: CRS 194-102.

45.0403 Final order of relinquishment.

(a) If the Court terminates parental rights of both parents or of the only living parent, the Court, after taking into account the racial, cultural, and religious background of the child, shall order guardianship of the person and legal custody transferred to:

- (1) the Department of Human and Social Services;
- (2) a child placement agency;
- (3) a relative of the child; or
- (4) an individual of good moral character.

(b) The Court considers, but shall not be bound by, a request that guardianship be placed in a grandparent, aunt, uncle, brother, or sister of the child.

(c) The order of relinquishment sets forth all pertinent facts brought at the hearing and, in addition, it states that the Court is satisfied that the counsel and guidance provided for in subsection (d) of 45.0402 has been offered the relinquishing parent or parents.

(d) A final order of relinquishment divests the relinquishing parent or parents of all legal rights and obligations they may have with respect to the child relinquished. The order releases the relinquished child from all legal obligations with respect to the relinquishing parent or parents.

(e) The fact that the relinquishing parent or parents are minors in no way affects the validity of the final order of relinquishment.

(f) A person having a living spouse from whom he is not legally separated shall petition jointly with that spouse, unless that spouse is the natural parent of the child to be adopted or has previously adopted the child.

History: 1980, PL 16-71 § 1; amd 2014, PL 33-10 § 7.

Research Guide: CRS 19-4-106, 17 ASC 652.

45.0404 Records-Separate dockets.

(a) Records and papers in relinquishment and in adoption proceedings from and after the filing of a petition are confidential and open to inspection only upon order of the Court for good cause shown. Separate dockets are maintained for relinquishment proceedings and for adoption proceedings.

(b) In all matters relating to the relinquishment and adoption of children, the court acts to preserve the anonymity of the natural parents, child, and adoptive parents.

History: 1980, PL 16-71 § 1.

Research Guide: CRS 194-104.

45.0410 Who may be adopted.

Any child under 18 years of age present in the territory at the time the petition for

adoption is filed and legally available for adoption under 45.0412 may be adopted. Upon approval of the Court, a person 18 years of age or older but under 21 years of age may be adopted as a child, and all provisions of this chapter referring to the adoption of a child apply to that person.

History: 1980, PL, 16-71 § 1.

Research Guide: CRS 194-105,17 ASC 653.

45.0411 Who may adopt.

- (a) Any person 21 years of age or older may petition the Court to decree an adoption.
- (b) A minor, upon approval of the court, may petition the Court to decree an adoption.

History: 1980, PL, 16-71 § 1.

45.0412 Availability for adoption.

- (a) A child may be available for adoption only upon:
 - (1) order of the Court terminating all parental rights in the child in a proceeding brought under paragraph (a)(3) of 45.0115;
 - (2) order of the Court decreeing the voluntary relinquishment of all parental rights in the child under 45.0403;
 - (3) written and verified consent of the guardian of the person, appointed by the Court, of a child whose parents are deceased;
 - (4) written and verified consent of the guardian of the person, appointed by the Court, of a child whose parental rights have been terminated under paragraph (1) or (2); or
 - (5) (A) written and verified consent of the parent in a stepparent adoption where the other parent is deceased or his rights have been terminated under paragraph (1) or (2): and
 - (B) written and verified consent of the parent in a stepparent adoption where the other parent has abandoned the child for a period of 1 year or more or where he has failed without cause to provide reasonable support for the child for a period of 1 year or more. Upon filing of the petition in adoption the Court shall issue a notice directed to the other parent, which notice shall state the nature of the relief sought, the names of the petitioner and the child, and the time and place set for hearing on the petition. If the address of the other parent is known, service of the notice shall be in the manner provided by Rules 4 and 5 of the Federal Rules of Civil Procedure for service of process, or in any other manner approved by the Court. Upon affidavit by the petitioner that after diligent search the address of the other parent remains unknown, the Court shall order service upon the other parent by 1 publication of the notice in a newspaper of general circulation. The hearing shall not be held sooner than 30 days after service of the notice is complete, and at that time the Court may enter a final decree of adoption notwithstanding the time limitation in subsection (b) of 45.0422;
 - (6) written and verified consent of the parent having only residual rights when custody has been awarded to the other parent in a dissolution of marriage proceeding where the spouse of the parent having custody wishes to adopt the child; or
 - (7) written and verified consent of the parent or parents as defined under 45.0103, in a stepparent adoption where the child is conceived and born out of wedlock.
- (b) Written consent to any proposed adoption shall be obtained from the person to be adopted if the person is 12 years of age or older.

(c) If placement for adoption occurred or custody of the child petition is filed in the Court of American Samoa, shall be available for adoption in substantial accordance with this section or in accordance with the law of the State or Territory where the placement was made at the discretion of the Court.

(d) If no guardian of the person of the child has been appointed and the child is otherwise available for adoption, the individual who has had the child living in his home for 1 year or more may petition the Court to appoint the guardian in order that the written and verified consent of the guardian may be sought. The petition becomes a part of the record in any adoption proceeding initiated later.

History:1980, PL, 16-71 § 1.

Research Guide: CRS 19-4.107, 17 ASC 602.

45.0413 Placement for purposes of adoption.

No placement of any child legally available for adoption under paragraph (a)(1), (a)(2), (a)(3) or subsection (d) of 45.0412 may be made for the purposes of adoption except by the Court, the Department of Human and Social Services, a child placement agency or institution, or an individual in whom guardianship of the person of the child has been placed by the Court.

History:1980, PL, 16-71 § 1; amd 2014, PL 33-10 § 8.

Research Guide: CRS 194-108, 17 ASC 651.

45.0414 Written consent and report.

(a) Unless the placement is made by the Court or in accordance with the law of another State or Territory, written consent of the Department of Human and Social Services, agency, or individual to the proposed adoption, as required by 45.04 12, shall be filed with the petition to adopt.

(b) In placements by the Department of Human and Social Services or child placement agencies there shall be filed, in addition to the written consent, a written report showing the following:

(1) the physical and mental health, emotional stability, and moral integrity of the petitioner and the ability of the petitioner to promote the welfare of the child; but no physical examination shall be required of any person who in good faith relies upon spiritual means or prayer in the free exercise of religion to prevent or cure disease unless there is reason to believe the person's physical condition is such that he would be unable to take care of the child;

(2) the physical and mental condition of the child;

(3) the child's family background, including the names of parents and other identifying data regarding the parents, if obtainable;

(4) reasons for the termination of parental rights in the child;

(5) the suitability of the adoption of this child by this petitioner and the child's own disposition toward the adoption in any case in which the child's age makes this feasible; and

(6) the length of time the child has been in the care and custody of the petitioner.

(c) Any party to the adoption proceeding may be entitled to see the report required under subsection (b), except that the names of parents and adoptive parents and any

means of identifying either are not made available except upon order of the Court.

History: 1980, PL 16-71 § 1; amd 2014, PL 33-10 § 9.

Research Guide: CRS 19-4-109.

45.0420 Petition for adoption.

(a) The petition for adoption is filed not later than 30 days after the date on which the child is first placed in the home of the adoptive applicants for the purpose of adoption unless the Court finds that there was reasonable cause or excusable neglect for not filing the petition. The Court then fixes a date for the hearing.

(b) Every petition for adoption of a child shall be verified by the petitioner, and shall be entitled substantially as follows: “In the matter of the petition of.... for the adoption of a child”. It contains:

(1) the name, date and place of birth; race, and place of residence of each petitioner, including the unmarried name of the adopting mother, and the date of marriage, if any, of the petitioners;

(2) the name, date and place of birth, and place of residence, if known by the petitioner, of the child to be adopted;

(3) the relationship, if any, of the child to the petitioner;

(4) the full name by which the child will be known after adoption;

(5) the full description of the property, if any, of the child;

(6) the names of the parents of the child, and the address of each living parent, if known to the petitioner;

(7) the names and addresses of the guardian of the person and the guardian of the estate of the child, if any have been appointed;

(8) the name of the agency or person to whom the custody of the child has been given by proper order of Court;

(9) the length of time the child has been in the care and custody of the petitioner;

(10) names of other children, both natural and adopted and both living and dead, of the adopting parents; and

(11) the residence and occupation of each petitioner at or about the time of the birth of the child.

(c) If the adoption placement is made by the Department of Human and Social Services or a child placement agency, the information required under paragraphs (b)(2) and (b)(6) is not included in the petition but is transmitted to the Court as part of the report required in 45.0414.

(d) A statement of any fee charged relative to the adoption is submitted to the Court with the petition and states that no additional fees are charged.

History: 1980, PL 16-71 § 1; amd 2014, PL 33-10 § 10.

Research Guide: CRS 19-4-110, 17 ASC 652, 17 ASC 655.

45.0421 Petition-Written reports.

Except for stepparent adoptions and those cases in which placement for adoption has been made by the Court, or by an individual in whom guardianship of the person of the child has been placed by the Court, or in accordance with the law of another State or Territory, if a petition for the adoption of a child is not accompanied by the written

consent and report of the Department of Human and Social Services or a child placement agency, the Court orders the Department of Human and Social Services, a child placement agency, or the Probation Department of the Court to make an investigation and file a written report substantially in the form outlined in subsection (b) of 45.0414, including a recommendation as to whether the adoption should be decreed.

History: 1980, PL 16-71 § 1; amd 2014, PL 33-10 § 11.

Research Guide: CRS 19-4-111, 17 ASC 652.

45.0422 Hearing on petition.

(a) A hearing on the petition for adoption is held on the date set or the date to which the matter has been regularly continued.

(b) No later than 6 months following the date of the hearing, unless for good cause shown that time is extended by the Court, the Court may enter a decree setting forth its findings and grant to the petitioner a final decree of adoption if it is satisfied as to:

(1) the availability of the child for adoption;

(2) the good moral character, the ability to support and educate the child, and the suitability of the home of the person adopting the child;

(3) the mental and physical condition of the child as a proper subject for adoption in the home; and

(4) the fact that the best interests of the child will be served by the adoption.

(c) The former name of the child is not to be stated in the final decree of adoption.

(d) If, after the hearing, the Court is not satisfied as to the matters listed under subsection (b), the petition for adoption may either be continued or dismissed in the discretion of the Court.

(e) All hearings with reference to adoption are closed to the public and, in the discretion of the Court, to any child who is the subject to adoption and who is under 12 years of age, but the Court may interview the child whenever it considers it proper.

History: 1980, PL 16-71 § 1.

Research Guide: CRS 19-4-112, 17 ASC 654.

45.0423 Legal effects of final decree.

(a) After the entry of a final decree of adoption, the petitioner and the adopted person sustain toward each other the legal relation of parent and child, including the rights of inheritance from each other, and have all the rights and be subject to all the duties of a child born in lawful wedlock to the petitioner.

(b) The natural parents are divested of all legal rights and obligations with respect to the child, and the adopted child is free from all legal obligations of obedience and maintenance with respect to the natural parents.

(c) Nothing in this chapter is to be construed to divest any natural parent or child of any legal right or obligation where the adopting parent is a stepparent and is married to the natural parent.

History: 1980, PL 16-71 § 1.

Research Guide: CRS 19-4-113, 17 ASC 602, 17 ASC 655.

45.0424 Copies of order of adoption-To whom given.

(a) If the Court enters an order of adoption, certified copies are given to the adopting parents, the person or agency consenting to the adoption, the Clerk of the High Court, and the Registrar of Vital Statistics.

(b) The Court or the adopting parents or their legal representative may send to the Registrar of Vital Statistics an application for a birth certificate, signed by the adoptive parents. The Registrar of Vital Statistics issues a birth certificate for the child showing the adoptive parents as the natural parents of the child and that the child is legitimate, and the Registrar then cross-references the new records with any old records and causes any old records of birth and parenthood to be placed in a sealed file and held in the records under security, and it is unlawful for the contents of the sealed file to be released without Court order. The new birth certificate is then placed in the permanent records of the Registrar of Vital Statistics and is the official record of birth upon which all future certified copies of other statistics are issued. The date and place of birth may not be altered and the cross-reference of the Registrar of Vital Statistics to the old records are not revealed or incorporated into the issuance of any certified copies of the birth certificate based upon the new original.

(c) If the child was born outside of American Samoa, a copy of the order of adoption and application for birth certificate is sent to the Registrar (or equivalent office) of the State, Territory, or Nation of birth.

History:1980, PL 16-71 § 1.

Research Guide: CRS 194-114, 17 ASC 656.

45.0430 Compensation for placing child prohibited.

(a) No person may offer, give, charge, or receive any money or other consideration or thing of value in connection with the consent to adoption or with the petition for adoption except attorney's fees relative to the adoption proceedings and the charges and fees as may be approved by the Court.

(b) Any person who violates the provisions of this section is guilty, upon conviction, of class A misdemeanor.

History:1980, PL 16-71 § 1.

Research Guide: CRS 19-4-115.

45.0431 Limitation on annulment of adoption.

Final decree of adoption may not be attacked by reason of any jurisdictional or procedural defect after 2 years following the entry of the final decree.

History:1980, PL, 16-71 § 1.

Research Guide: CRS 194-116.

45.0432 Long term guardianships for minor children.

(a) Notwithstanding any other section of law, in appropriate cases serving the best interests of a child, the Court may appoint a qualified person as the child's guardian with such powers and custodial duties as set forth under 45.0103 (16) and (18), or either, as the Court may order. Guardianships established under this section continue until the child's age of majority or earlier termination by the Court after a hearing conducted with

due notice to all interested parties. An interested party may at any time, with cause, petition the Court to terminate the guardianship.

(b) An individual appointed as guardian or vested with legal custody of a child, or both, may not remove or allow the child to be removed from the Territory for more than thirty days without the prior approval of the Court.

(c) The Court may conduct periodic hearings on its own motion to review and monitor a guardianship authorized under this section.

History: 2010, PL 31-14 § 1.

Chapter 05

JUVENILE PROBATION SERVICES

Sections:

45.0501 Juvenile probation office-Service agreements.

45.0502 Juvenile probation officers- Powers and duties.

Research Guide: Following each section of this chapter appear the various codes, and their sections, upon which the juvenile justice provisions were based. The following abbreviations apply:

ASC—American Samoa Code.

CRS—Colorado Revised Statutes (1973).

45.0501 Juvenile probation office-Service agreements.

(a) The High Court is authorized to establish a juvenile probation office.

(b) The High Court is also authorized to appoint juvenile probation officers and other professionals as may be required.

(c) (1) The High Court is authorized to enter into agreement with the Department of Human and Social Services, other public agencies, private nonprofit agencies, or with other Courts to provide supervision or other services for children placed on probation by the Court.

(2) The conditions and terms of these agreements are set forth in writing, including any payments to be made by the Court for the services provided.

(3) Any agreement made under this subsection may be terminated upon 90 days written notice by either party.

History: 1980, PL, 16-71 § 1; amd 2014, PL 33-10 § 12.

Case Notes:

Subsection (1): Legal termination available only when child has been neglected by one or both natural parents or is homeless. Three Minor Children, 3 A.S.R. 2d 4 (1986).

Research Guide: CRS 19-5, 101, 33 ASC 3.

45.0502 Juvenile probation officers-Powers and duties.

(a) Juvenile probation officers appointed under the provisions of this chapter make investigations and keep written records as the Court may direct.

(b) When any child is placed on probation, the juvenile probation officer gives the child and his parents or guardian a written statement of the terms and conditions of his probation and explains fully those terms and conditions to him, unless the statement has been given him and explanation made by the Court under 45.0363.

(c) (1) Each juvenile probation officer keeps himself informed as to the condition and conduct of each child placed under his supervision and reports on them to the Court as it may direct.

(2) He uses all suitable methods including counseling to aid each child under his supervision and performs any other duties in connection with the care and custody of children as the Court may direct.

(3) He keeps complete records of all work done as well as complete accounts of all money collected by the Court from those under supervision.

(d) Juvenile probation officers, for the purpose of performing their duties, have all the powers of law enforcement officers.

(e) (1) When a juvenile probation counselor learns that a child under his supervision has changed, temporarily or permanently, his residence to another State or Territory, he immediately notifies the Court.

(2) If, after the notification, the Court determines that it is in the best interests of the child to transfer jurisdiction to the Court of the State or Territory in which the child resides or is to reside, the Court immediately notifies the receiving Court and enters an order transferring jurisdiction to that Court. The Court transferring jurisdiction under this paragraph transmits all documents, including legal and social records, or certified copies of them, to the receiving Court, together with the order transferring jurisdiction. If the receiving Court accepts jurisdiction over the child, the receiving Court may proceed with the case as if the petition has been originally filed in that Court.

History: 1980, PL, 16-71 § 1.

Case Notes:

Voluntary relinquishment requires presence of natural parents. Involuntary relinquishment not to be used to avoid bringing natural parents into court. Three Minor Children, 3 ASR2d 4(1986).

Research Guide: CRS 19-5-102.

Chapters 06-09

(RESERVED)

Chapter 10

INSTITUTIONAL FACILITIES AND TRANSFERS

Sections:

- 45.1001 Authority-Corrections bureau.**
- 45.1002 Plans for shelter and detention services.**
- 45.1003 Receiving centers-Designation.**
- 45.1004 Juvenile detention services and facilities to be provided by bureau-Education.**
- 45.1006 Contracts and agreements with public and private agencies.**
- 45.1007 Directors-Duties.**
- 45.1010 Rules-Academic and vocational courses.**
- 45.1015 Children committed to the bureau evaluation and placement.**
- 45.1020 Children committed to the bureau-Transfers.**
- 45.1025 Length of placement.**

45.1026 Runaways-Penalties.

Research Guide: Following each section of this chapter appear the various codes, and their sections, upon which the juvenile justice provisions were based. The following abbreviations apply:

ASC—American Samoa Code.

CRS—Colorado Revised Statutes. (1973).

45.1001 Authority-Corrections Bureau.

(a) The Corrections Bureau, through the Department of Public Safety, establishes and operates facilities necessary for the care, education, training, treatment, and rehabilitation of those children legally committed to its custody under 45.0350. The Department of Public Safety insures that adequate funds are available and allocated for these purposes, the facilities may include, but are not limited to:

- (1) group care facilities and homes, including half-way houses;
- (2) training schools;
- (3) conservation camps; and
- (4) diagnostic and evaluation centers and receiving centers.

(b) The Bureau cooperates with other governmental units and agencies, including appropriate local units of government, territorial departments and institutions, and agencies of the federal government in order to facilitate the training and rehabilitation of youth.

(c) The compliance with these provisions is reviewed by the American Samoa Criminal Justice Planning Board, the proper education of the children present in a juvenile detention facility, as provided by law.

History: 1980, PL 16-71 § 1.

Research Guide: CRS 19-8-101.

45.1002 Plans for shelter and detention services.

The Bureau and the Office of Youth Development, with the advice of the American Samoa Criminal Justice Planning Board, develops respective plans for providing detention and shelter facilities, and services for children pending Court action. The plans shall: include projected numbers of children to be served by type of service, including diagnosis, evaluation, and location; recommend the content and scope of detention and shelter services; and set forth the estimated cost of services and facilities which are recommended, including any alterations or remodeling of existing facilities.

History: 1980, PL 16-71 § 1.

Research Guide: CRS 19-8-120.

45.1003 Receiving centers-Designation.

The Territorial Correctional Facility is designated as the receiving center for delinquent children committed to the Bureau under 45.3050.

History: 1980, PL 16-71 § 1.

Research Guide: CRS 19-8-102.

45.1004 Juvenile detention services and facilities to be provided by Bureau-Education.

(a) Detention services for temporary care of a child under chapter 2 are provided by the Bureau, which consults on a regular basis with the court concerning the detention program at that facility.

(b) The Department of Education furnishes teachers and any books or equipment needed for the proper education of the children present in the juvenile detention facility, as provided by law.

History: 1980, PL 16-71 § 1.

Research Guide: CRS 19-8-102.

45.1006 Contracts and agreements with public and private agencies.

(a) The Bureau may enter into agreements or contracts with any governmental unit or agency or private facility cooperating or willing to cooperate in a program to implement the purposes of this chapter. The contracts or agreements may provide, among other things, for the type of work to be performed at a camp or other facility, for the rate of payment for the work, and for other matters relating to the care and treatment of children.

(b) Placement of children by the Bureau in any public or private facility not under the jurisdiction of the Bureau shall not terminate the legal custody of the Bureau.

(c) The Department of Public Safety has the right to inspect all facilities used by it and to examine and consult with persons in its legal custody that have been placed there.

History: 1980, PL 16-71 § 1.

Research Guide: CRS 19-8-110.

45.1007 Directors-Duties.

(a) The Department of Public Safety is authorized to appoint a Director for each facility established by 45.1001.

(b) It is the duty of the Director of each facility established by 45.1001 to:

(1) report to the Bureau at times and on matters the Bureau requires;

(2) receive, subject to limitations on physical capacity and programs, all children committed to the custody of the Bureau and placed in his care under the provisions of this chapter and to keep them for rehabilitation, education, and training until discharged by law or under the rules of the Bureau or released on parole as provided in 45.1102; and

(3) make a careful and thorough evaluation of every child placed under his care at intervals not greater than 6 months, the evaluation to ascertain whether the child's program should be modified, whether his transfer to another facility should be recommended to the Director, or whether his release should be recommended to the Juvenile Parole Board.

History: 1980, PL 16-71 § 1.

Research Guide: CRS 19-8-111.

45.1010 Rules-Academic and vocational courses.

(a) It is the duty of the Bureau to develop and adopt rules necessary for imparting instruction, preserving health, and enforcing discipline of children committed to the

Bureau.

(b) The academic courses of study and vocational training and instruction given in the facilities established by 45.1001 shall include those approved and provided by the Department of Education for the instruction of pupils in the primary and secondary schools of the Territory, as provided by law. Full credit shall be given by the Department of Education for completion of any semester, term, or year of study by any child who has earned them.

History:1980, PL 16-71 § 1.

Research Guide: CRS 19-8-113.

45.1015 Children committed to the bureau evaluation and placement.

(a) (1) Each child committed to the custody of the Bureau is examined and evaluated by the Bureau prior to institutional placement or other disposition.

(2) A professional psychological and medical examination is completed within 30 days. The Bureau determines by rule provisions necessary to implement this mandate. To the extent possible and relevant, the evidence, reports, examinations, studies, and other materials utilized in a dispositional hearing conducted under 45.0345 are also utilized. The provisions of this paragraph apply to examination and evaluation conducted under subsection (a) of 45.1020.

(b) Each child is then placed by the Bureau in the appropriate Territorial institution or facility, released on parole, or placed as provided in 45.1006 and 45.1025, as indicated by the examination and evaluation and the limitations on physical capacity or programs at the respective Territorial institutions and facilities.

(c) When the Bureau determines that child requires placement in a facility for the mentally ill or developmentally disabled, it places the child in the appropriate facility in which the child has been placed.

History:1980, PL 16-71 § 1.

Research Guide: CRS 19-8-103.

45.1020 Children committed to the bureau-Transfers.

(a) The Bureau may transfer any child committed under 45.0350 among the facilities established under 45.1001; except that before child is transferred, he is examined and evaluated, and the evaluation is reviewed by the bureau before it approves the transfer.

(b) When the Bureau finds that the welfare and protection of a child or of others requires the child's immediate transfer to another facility, it makes the transfer prior to having the child examined and evaluated.

(c) (1) Any child committed under 45.0350 may be transferred temporarily to any Territorial facility of the Lyndon B. Johnson Tropical Medical Center for the purposes of diagnosis evaluation or emergency treatment. The period of temporary transfer shall not exceed 60 days.

(2) When the Bureau determines that a child committed under 45.0350 requires transfer of more than 60 days to a facility for the mentally ill or developmentally disabled, it transfers the child to the appropriate facility and immediately petitions the Court for a commitment to the facility in which the child has been placed.

History:1980, PL 16-71 § 1.

Research Guide: CRS 19-8-104.

45.1025 Length of placement.

Institutional placement under this chapter shall not exceed 2 years for children committed under 45.0350 except as provided in paragraphs (b)(2) to (b)(4) of 45.0360.

History: 1980, PL 16-71 § 1.

Research Guide: CRS 19-8-105

45.1026 Runaways-Penalties.

Every person who aids or abets any child committed to the custody of the Bureau under 45.0350 in running away from the facility in whose care he has been placed, or who knowingly harbors the child, or who aids in abducting him from persons to whose care and service he has been properly committed is guilty, upon conviction, of a class A misdemeanor.

History: 1980, PL 16-71 § 1.

Research Guide: CRS 19-8-115.

Chapter 11

JUVENILE PAROLE

Sections:

- 45.1101 Juvenile parole board.**
- 45.1102 Parole board-Powers and duties.**
- 45.1103 Juvenile parole.**

Research Guide: Following each section of this chapter appear the various codes, and their sections, upon which the juvenile justice provisions were based. The following abbreviations apply.

ASC—American Samoa Code.

CRS—Colorado Revised Statutes (1973).

45.1101 Juvenile parole board.

The juvenile parole functions and responsibilities shall be assumed by the Board of Parole established under 46.2701. This Board shall consist of 5 members appointed by the Governor, 3 of which must be non elected private citizens not employed by the government.

History: 1980, PL 16-71 § 1.

45.1102 Parole Board-Powers and duties.

(a) The Board has the authority to grant, defer, suspend, or revoke all paroles of a child committed to the Corrections Bureau under 45.0350 as are in the best interests of the child and the public, except that each child shall be considered for parole by the Board within 1 year after commitment.

(b) (1) The Board shall grant parole to a child for no longer than 1 year without review, and no child shall remain on parole longer than 2 years after the original grant of parole, except that the Board may extend parole supervision for an additional period not to exceed 2 years if the extension is found to be in the best interests of the child or the

public after a hearing as provided in subsection (c).

(2) The Board has the authority to release a child from parole before the expiration of 2 years when it appears to the Board that there is reasonable probability that the child will remain at liberty without violating the law.

(3) The Board may revoke or modify any of its previous orders respecting a committed child, except an order of unconditional release.

(c) The child and his parents or guardian shall be informed that they may be represented by counsel in any hearing for the grant, modification, or revocation of a parole before the Board.

(d) The Board shall consult the Director of the facility in which the child had been placed before granting a parole.

(e) The Board has subpoena power and the power to administer oaths.

History: 1980, PL 16-71 § 1.

Research Guide: CRS 19-9-102.

45.1103 Juvenile parole.

(a) A parole officer position is established within the Attorney General's office. All juveniles paroled under 45.1102 are under the supervision of the parole officer.

(b) When any child is placed on parole, the parole officer gives the child a written statement of the terms and conditions of his parole and explains fully those terms and conditions to him, his parents or legal guardians.

History: 1980, PL 16-71 § 1.

Research Guide: CRS 19-9-105.

Chapters 12-14

(RESERVED)

Chapter 15

PATERNITY PROCEEDINGS

Sections:

- 45.1501 Persons who may initiate proceedings-Limitations.**
- 45.1502 Petition.**
- 45.1503 Summons.**
- 45.1504 Hearing testimony.**
- 45.1505 Orders.**
- 45.1506 Failure to comply.**
- 45.1507 Agreement or compromise.**

Research Guide: Following each section of this chapter appear the various codes, and their sections, upon which the juvenile justice provisions were based. The following abbreviations apply

ACS—American Samoa Code.

CRS—Colorado Revised Statutes (1973).

45.1501 Persons who may initiate proceedings-Limitations.

(a) Proceedings to establish the paternity of a child and to compel support under this

chapter may be commenced by the mother, whether a minor or not, by the child's guardian of the person, or, if the mother or the child is a public charge, by the Department of Human and Social Services.

(b) No proceeding under this chapter may be initiated after the child is 5 years of age or older unless paternity has been acknowledged by the father in writing or by furnishing support.

History: 1980, PL 16-71 § 1; amd 2014, PL 33-10 § 13.

Research Guide: CRS 19-6-101

45.1502 Petition.

Proceedings under this chapter are started by the filing of a verified petition alleging that the person named as respondent is the father of the child and requesting the Court to enter a declaration of paternity, an order of support, or any other relief that may be appropriate.

History: 1980, PL 16-71 § 1.

Research Guide: CRS 19-6-102.

45.1503 Summons.

(a) Upon filing of the petition, the Court issues a summons stating the substance of the petition and requiring the alleged father to appear at the time and place set for hearing on the petition.

(b) Service of the summons is by personal service as provided in Rules 4 and 5 of the Federal Rules of Civil Procedure.

(c) The hearing is set for a day not less than 10 days after service is completed or at a later date the Court may order.

History: 1980, PL 16-71 § 1.

Research Guide: CRS 19-6-103, 11 ASC 801.

45.1504 Hearing testimony.

(a) At the hearing, the mother and alleged father are competent to testify. If the mother is married, both she and her husband may testify as to nonaccess.

(b) The Court may exclude the general public from the hearing room and may admit only persons directly interested in the case, including officers of the Court and witnesses.

(c) Upon motion of the alleged father, blood grouping tests may be ordered and the results received in evidence.

History: 1980, PL 16-71 § 1.

Case Notes:

Section permitting service of juror literate in only one of the two named languages and illiterate in the other does not violate defendant's constitutional right to effective assistance of counsel use of translator for jury instructions does not violate constitutional right to due process. A.S.G. v. Agasiva, 4 ASR2d 110 (1987).

Research Guide: CRS 19-6-104.

45.1505 Orders.

(a) If the Court finds the respondent is not the father of the child, it dismisses the petition.

(b) If the Court finds the respondent is the father of the child, it makes an order declaring paternity.

(c) (1) In a proceeding in which the Court has made an order declaring paternity, the Court may order the father to pay weekly or at other fixed periods, a fair and reasonable sum for the support and education of the child until the child is 18 years of age, or until the child is 21 years of age in the discretion of the Court, unless the support order is terminated sooner because the child becomes self-supporting or is legally emancipated. The Court takes into consideration other persons legally entitled to support by the father.

(2) The Court may order a father to pay for the support of his child after the child is 21 years of age if the child is unable to care for himself by reason of mental or physical handicap or other reason justifiable in the opinion of the court.

(3) The order declaring paternity may also direct the father to pay for support of the child prior to the order.

(4) The order may direct the father to pay necessary expenses incurred by or for the mother in connection with her confinement and any expenses in connection with her pregnancy as the Court may find proper.

(5) The Court may order payments made to the mother or to some other person or agency who shall administer them under the supervision of the Court.

(d) The Court may require the father to enter a bond as surety that the order of support will be carried out.

(e) The Court may modify an order of support upon proof of change in relevant circumstances.

(f) The Court may assess the costs of the action as part of its order.

History: 1980, PL 16-71 § 1.

Research Guide: CRS 19-6-108.

45.1506 Failure to comply.

(a) A person failing to comply with an order of the Court in connection with paternity proceedings brought under this chapter may be found in contempt of Court and dealt with accordingly.

(b) The Court has authority to issue writs of execution for the collection of accrued and unpaid installments of support orders.

History: 1980, PL 16-71 § 1.

Research Guide: CRS 19-6-106.

45.1507 Agreement or compromise.

(a) An agreement or compromise made by the mother or by some authorized person on behalf of either the mother or child concerning the support of either is binding upon the mother and child only when the court approves the agreement or compromise after determining that adequate provision for support has been made and is fully secured.

(b) The complete performance of the agreement or compromise, when so approved, bars other remedies of the mother or child for the support and education of the child.

History: 1980, PL 16-71 § 1.

Chapter 16

SUPPORT PROCEEDINGS

Sections:

- 45.1601 Initiation of proceedings.**
- 45.1602 Summons.**
- 45.1603 Hearing-Orders.**
- 45.1604 Failure to comply.**

Research Guide: Following each section of this chapter appear the various codes, and their sections, upon which the juvenile justice provisions were based. The following abbreviations apply:

ACS—American Samoa Code.

CRS—Colorado Revised Statutes (1973).

45.1601 Initiation of proceedings.

(a) Proceedings to compel a parent of an illegitimate child or children to support his or her offspring may be commenced by the other parent, legal guardian or custodian of the child or by his or her immediate family.

(b) A petition under this chapter may be filed at any time prior to the 18th birthday of the child.

(c) Once the Court has acquired jurisdiction, the jurisdiction is retained regardless of the child's place of residence or physical presence.

(d) The minority of the petitioner or of the respondent shall in no way affect the validity of the proceedings.

(e) Actions brought under this chapter shall be entitled, "The People of the Territory of American Samoa in the interest of children, upon the Petition of petitioner, and concerning , respondent".

History:1980, PL 16-71 § 1.

Research Guide: CRS 19-7-101, 15 ASC 1022.

45.1602 Summons.

(a) Upon filing of the petition, the court issues a summons stating the substance of the petition and requiring the respondent to appear at the time and place set for hearing on the petition.

(b) Service of the summons is by personal service as provided in Rules 4 and 5 of the Federal Rules of Civil Procedure.

(c) The hearing is set for a day not less than 10 days after service is completed or at a later date the Court may order.

History:1980, PL 16-71 § 1.

Research Guide: CRS 19-7-102, 11 ASC 801.

45.1603 Hearing-Orders.

(a) If, at the hearing, the Court finds that the respondent has an obligation to support the child or children mentioned in the petition, the Court may enter an order directing the

respondent to pay sums for support that may be reasonable under the circumstances.

(b) If, at or before the hearing, the respondent waives his right to a hearing and stipulates to the entry of a support order, that stipulation may be presented to the Court. If the Court finds that the amount stipulated is reasonable under the circumstances, it may enter an order of support in accordance with the stipulation.

(c) The Court may enter a temporary support order, to remain effective pending a final disposition of the proceeding.

(d) The Court may modify an order of support upon proof of change in relevant, circumstances.

(e) Any order made under this chapter shall not be exclusive.

(f) The Court may assess the costs of the action as part of its order.

(g) In those cases brought for support of an illegitimate child or children, the Court may assess the costs of the action individually, or to both parties as a part of its order.

History:1980, PL 16-71 § 1.

Research Guide: CRS 19-7-103.

45.1604 Failure to comply.

(a) A person failing to comply with an order of the Court entered under this chapter may be found in contempt of Court and dealt with accordingly.

(b) The Court has authority to issue writs of execution for the collection of accrued and unpaid installments of support orders.

History:1980, PL 16-71 § 1.

Research Guide: CRS 19-7-1 04.

Chapters 17-19

(RESERVED)

Chapter 20

CHILD PROTECTION

Sections:

- 45.2001 Definitions.**
- 45.2002 Mandated reports of abuse or neglect.**
- 45.2003 Mandatory report to medical examiner-Post-mortem investigations.**
- 45.2004 Evidence of abuse-Color photographs and X-rays.**
- 45.2005 Protective custody.**
- 45.2010 Reporting procedures.**
- 45.2011 Department duties upon receipt of report.**
- 45.2012 Immunity from liability-Persons reporting.**
- 45.2015 Child abuse and child neglect diversion program.**
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- 45.2017 Court proceedings-Guardian ad litem.**
- 45.2020 Central registry-Establishment.**
- 45.2021 Central registry-Telephone number for reporting cases.**

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- 45.2029 Central registry-Written notice of amendment.**
- 45.2030 Central registry-Released data or information.**
- 45.2031 Child abuse commission-Creation-Review.**
- 45.2032 Education program.**

Research Guide: Following each section of this chapter appear the various codes, and their sections upon which the juvenile justice provisions were based. The following abbreviations apply:

ASC—American Samoa Code.

CRS—Colorado Revised Statutes (1973).

45.2001 Definitions.

As used in this chapter unless the context otherwise requires:

(a)(1) “Abuse” or “child abuse or neglect” means an act or omission in one of the following categories which seriously threatens the health or welfare of a child:

(A) when a child exhibits evidence of serious bruising, bleeding, malnutrition, failure to thrive, mental injury, burns, fracture of a bone, subdural hematoma, soft tissue swelling, or death, and the condition or death is not justifiably explained, or where the history given concerning the condition or death is at variance with the degree or type of the condition or death, or circumstances indicate that the condition or death may not be the product of an accidental occurrence;

(B) when a child is subject to the sexual offenses contained in 46.3601 to 46.3617 and 46.3802, or is allowed, permitted, or encouraged by the child’s parents, legal guardian, custodian, or any other person responsible for the child’s health and welfare, to engage in prostitution or be the subject of obscene or pornographic photographing, filming, or depicting;

(C) any case in which the child’s parents, legal guardians, custodians or any other person responsible for the child’s health and welfare fail to take the action to provide adequate food, clothing, shelter, medical care, or supervision that a prudent parent would take.

(2) In all cases, those investigating reports of child abuse shall take into account accepted child rearing practices of the culture. Nothing in subparagraph (a)(1)(B) refers to acts which could be construed to be a reasonable exercise of parental discipline as defined in subsection (20) of 45.0103.

(b) “Agency” means Child Protection Agency of the Department of Human and Social Services.

(c) “Department” means the Department of Public Safety.

(d) “Neglect” means acts which can reasonably be construed to fall under the definition of “child abuse or neglect” as defined in subsection (a) above.

(e) “Receiving agency” means the Department of Human and Social Services or law enforcement agency first receiving a report of alleged child abuse.

(f) “Responsible person” means a child’s parent, legal guardian, or custodian, any employee of a residential facility, any staff person providing out-of-home care or under any other settings in which children are provided care, or any other person responsible for

the child's health and welfare.

(g) "Unfounded report" means any report made under this chapter which is not supported by some credible evidence.

History: 1980, PL 16-71 § 1; 1981; PL 17-7 § 1; amd 1985, PL 19-23 § 1; amd 1988, PL 20-71; amd 2014, PL 33-10 § 14.

Amendments: 1985 Subsection (a)(1)(A): added "mental injury

Subsection (a)(1)(B) Added "and 46.3802" and "or any other person responsible for the child's health and welfare", deleted "or" and "for commercial purposes".

Subsection (a)(1)(C) deleted "or", added "or any other person responsible for the child's health and welfare" and "medical care".

Subsection (c): changed "(A)" to "(a)" in cross reference.

Research Guide: CRS 19-10-103, 21 ASC 2901; Federal Register, May 27. 1980 PART VIII, Department of Health and Human Services.

45.2002 Mandated reports of abuse or neglect.

(a) Any person specified in subsection (b) who has reasonable cause to know or suspect that a child has been subjected to abuse or neglect or who has observed the child being subjected to circumstances or conditions which would reasonably result in abuse or neglect shall immediately report or cause a report to be made of that fact to the agency, who immediately informs the department.

(b) Persons required to report the abuse or neglect or circumstances or conditions includes any:

- (1) physician or surgeon, including a physician in training;
- (2) child health associate;
- (3) medical examiner or coroner;
- (4) dentist;
- (5) osteopath;
- (6) optometrist;
- (7) chiropractor;
- (8) chiropodist or podiatrist;
- (9) registered nurse or licensed practical nurse;
- (10) hospital personnel engaged in the admission, care, or treatment of patients;
- (11) Christian Science practitioner;
- (12) school official or employee;
- (13) social worker or worker in a family care home or child care center; and
- (14) mental health professional.

(c) In addition to those persons specifically required by this section to report known or suspected child abuse or neglect and circumstances or conditions which might reasonably result in abuse or neglect, any other persons are urged and authorized to report known or suspected child abuse or neglect and circumstances and conditions which might reasonably result in child abuse or neglect to a the department or the agency.

(d) Any person who willfully violates the provisions of subsection (a):

- (1) commits a Class A misdemeanor; and
- (2) is liable for those damages proximately caused.

(e) If the agency feels there is evidence of possible child abuse, the department must be notified.

History: 1980, PL 16-71 § 1; 1988, PL 20-71; amd 1988, PL 20-71.

Research Guide: CRS 19-10-104, 21 ASC 2902.

45.2003 Mandatory report to medical examiner-Post-mortem investigations.

Any person who is required by 45.2002 to report known or suspected child abuse or neglect and anyone who has reasonable cause to suspect that a child died as a result of child abuse or neglect shall report that fact immediately to the department. The department accepts the report for investigation and reports its findings to the Attorney General and the agency.

History: 1980, PL 16-71 § 1; amd 1988, PL 20-71.

Research Guide: CRS 19-10-105, 21 ASC 2903.

45.2004 Evidence of abuse-Color photographs and X-rays.

(a) Any person who is required, or authorized, by 45.2002 to report known or suspected child abuse or neglect who has before him a child he reasonably believes has been abused or neglected may take or cause to be taken color photographs of the areas of trauma visible on the child. If medically indicated, the person may take or cause to be taken X-rays of the child.

(b) Any color photographs or X-rays which show evidence of child abuse shall be immediately forwarded to a receiving agency.

History: 1980, PL 16-71 § 1.

Research Guide: CRS 19-10-106, 21 ASC 2904.

45.2005 Protective custody.

A law enforcement officer or any officer of the agency may take a child into custody without the consent of the parent or guardian, whether or not additional medical treatment is required if the circumstances or conditions of the child are such that continuing in his place of residence or in the care and custody of the parent, guardian, custodian or other person responsible for the child's care presents an imminent danger to that child's life or health: provided, however, that the custody does not exceed 96 hours and that the Court and the agency are notified immediately in order that the child-protective proceedings may be initiated. The agency may give effective consent for medical, dental, health, and hospital services for any abused child.

History: 1988, PL 20-71.

45.2010 Reporting procedures.

(a) Reports of known or suspected child abuse or neglect made under this chapter are immediately made to the department by a written report prepared by those persons required to report, if so requested by the receiving agency. The receiving agency forwards a copy of its own report to the central registry on forms supplied by the registry. If at any time a report of suspected child abuse or neglect is made to the agency, the department must be notified. If a report of suspected child abuse or neglect is made to the department, the agency must be notified.

(b) The reports, when possible, shall include the following information:

- (1) the name, address, age, sex, religion and race of the child;
- (2) the name and address of the responsible person;
- (3) the nature and extent of the child's injuries, including any evidence of previous known or suspected abuse or neglect of the child or the child's siblings;

(4) the names and addresses of the persons responsible for the suspected abuse or neglect, if known;

(5) the family composition;

(6) the name, address, and occupation of the person making the report;

(7) any action taken by the reporting source; and

(8) any other information that the person making the report believes may be helpful in furthering the purposes of this chapter.

(c) Copies of the report of known or suspected child abuse or neglect are immediately transmitted by the receiving agency to the Attorney General's office and to the department.

(d) A written report from persons or officials required by this chapter to report known or suspected child abuse or neglect is admissible as evidence in any proceeding relating to child abuse.

History: 1980, PL 16-71 § 1; amd 1988, PL 20-71.

Research Guide: CRS 19-10-108, 21 ASC 2906.

History: 1930, PL 16-71 § 1 Research Guide: 21 ASC 2905

45.2011 Agency duties upon receipt of report.

(a) The agency makes a thorough investigation promptly upon receiving either the oral or the written report. The primary purpose of the investigation is the protection of the child.

(b) The investigation shall include the nature, extent and cause of the child abuse, sexual abuse, or neglect; the identity of the person responsible; the names and conditions of other children in the home; an evaluation of the parents or persons responsible for their care; and all other pertinent data.

(c) The investigation includes a visit to the child's home; a physical, and psychological, or psychiatric evaluation of all children in the home; and an interview with the subject child. If the admission to the home, school, or any other place that the child may be, or permission of the parent or other persons responsible for the children for the physical and psychological, or psychiatric evaluation cannot be obtained, then the Court, upon cause shown, orders the parents and persons responsible and in charge of any place where the child may be to allow entrance for the interview, above evaluations and investigations.

(d) If, before the evaluation is complete, the opinion of the investigators is that immediate removal is necessary to protect children from further abuse or neglect, the court, on petition by the investigators and with good cause shown, shall issue an order for temporary removal and custody.

(e) The agency shall make a written report or case summary, together with services offered and accepted, to the central registry on forms supplied by the registry.

History: 1980, PL 16-71 § 1; amd 1988, PL 20-71.

Research Guide: 21 ASC 2907.

45.2012 Immunity from liability-Persons reporting.

Any person participating in good faith in the preparation of a report or in a judicial proceeding held under this chapter and any person responsible for the taking of

photographs or X-rays, or the placing temporary protective custody of a child under this chapter, is immune from any liability, civil or criminal, that otherwise might result by reason of the reporting. For the purpose of any proceedings, civil or criminal, any person reporting child abuse, any person taking, or causing to be taken, photographs or X-rays, or any person who has legal authority to place a child in protective custody is presumed to have acted in good faith.

History: 1980, PL 16-71 § 1.

Research Guide: CRS 19-10-110, 21 ASC 2908.

45.2015 Child abuse and child neglect diversion program.

(a) The Attorney General, upon recommendation of the agency, may refer a person accused or suspected of child abuse or neglect to a nonjudicial source of treatment or assistance upon conditions set forth by the agency and the Attorney General. If a person is so diverted from the criminal justice system, the Attorney General shall not file charges in connection with the case if the person participates to the satisfaction of the agency and the attorney general in the diversion program offered.

(b) The initial diversion shall be for a period not to exceed 2 years. This diversion period may be extended for 1 additional 1-year period by the Attorney General if necessary. Decisions regarding extending diversion time periods shall be made following review of the person diverted by the Attorney General and the agency.

(c) If the person diverted successfully completes the diversion program to the satisfaction of the agency and the Attorney General, he is released from the terms and conditions of the program.

(d) Participation by a person accused or suspected of child abuse in any diversion program is voluntary.

History: 1980, PL 16-71 § 1; amd 1988, PL 20-71.

Research Guide: CRS 19-10-111.

45.2016 Abrogation of privileged communication.

The privileged communication between patient and physician and between husband and wife is not a ground for excluding evidence in any judicial proceeding resulting from a report under this chapter.

History: 1980, PL 16-71 § 1.

Research Guide: CRS 19-10-112, 1 ASC 2909.

45.2017 Court proceedings-Guardian ad litem.

(a) The Department of Law Enforcement Agency receiving a report under 45.2002 or 45.2003, in addition to taking immediate steps under paragraph (a)(2) of 45.0201 and 45.2005 as may be required to protect a child, shall inform the Court within 72 hours that the child appears to be within the Court's jurisdiction. Upon receipt of the information, the Court makes an immediate investigation to determine whether protection of the child from further abuse is required and upon that determination may authorize the filing of a petition, as provided for in 45.0302.

(b) In any proceeding initiated under this section, the Court shall name as respondents all persons alleged by the petition to have caused or permitted the abuse or neglect

alleged in the petition. In each case, the responsible person is named as respondent. Summons is issued for all named respondents in accordance with 45.0311 to 45.0318.

(c) The Court in each case filed under this section appoints a guardian ad litem in accordance with 45.0326. The guardian ad litem is given access to all reports relevant to the case made to or by any public agency or person under this chapter and 45.0304 and to reports of any examination of the responsible person made under this section. The guardian ad litem is charged in general with the representation of the child's interests. To that end he makes further investigation he considers necessary to ascertain the facts, interview witnesses, and examine and cross-examine witnesses in both the adjudicatory and dispositional hearings and may introduce and examine his own witnesses, make recommendations to the Court concerning the child's welfare, and participate further in the proceedings to the degree necessary to adequately represent the child.

(d) If the prayer of the petition is granted, the costs of this proceeding, including guardian ad litem and expert witness fees, may be charged by the Court against the respondent. If the prayer of the petition is not granted, the costs may be charged against the Territory of American Samoa.

History: 1980, PL 16-71 § 1; amd 1988, PL 20-71.

Research Guide: CRS 19-10-1 13, 21 ASC 2911

45.2020 Central registry-Establishment.

There is established within the agency a central registry for child abuse, sexual abuse, or neglect under this chapter.

History: 1980, PL 16-71 § 1; amd 1988, PL 20-71.

Research Guide: 21 ASC 2912.

45.2021 Central registry-Telephone number for reporting cases.

There is a single telephone number that all persons, whether mandated by law or not, may use to report cases of suspected child abuse, sexual abuse, or neglect and that all persons so authorized by this chapter may use for determining the existence of prior records in order to evaluate the condition or circumstances of the child before them. The oral telephone reports are immediately transmitted by the central registry to the Director of Human and Social Services together with any previous report concerning the subject of the report or any other pertinent information.

History: 1980, PL 16-71 § 1; amd 2014, PL 33-10 § 15.

Research Guide: 21 ASC 2912.

45.2022 Central registry-Contents.

The central registry contains, but is not limited to:

- (1) all information in the written report;
- (2) record of the final disposition of the report including services offered and services accepted;
- (3) the plan for rehabilitative treatment;
- (4) the names and identifying dates, and circumstances of any persons requesting or receiving information from the registry; and
- (5) any other information which might be helpful in furthering the purpose of this

chapter.

History: 1980, PL 16-71 § 1.

Research Guide: 21 ASC 2912.

45.2023 Central registry-Availability of information.

Reports made under this chapter as well as any other information obtained, and reports written or photographs taken concerning those reports in the possession of the department and agency are confidential and are made available only to:

- (1) Attorney General at all times;
- (2) a physician who has before him a child whom he reasonably believes may have been abused, sexually abused, or neglected;
- (3) a person authorized to place a child in protective custody when that person has before him a child whom he reasonably believes may have been abused, sexually abused, or neglected and that person requires the information to determine whether to place the child in protective custody;
- (4) another duly authorized agency having responsibility for the care or supervision of the subject or a report;
- (5) any person who is the subject of a report;
- (6) a Court where it determines that information is necessary for the determination of an issue before the Court; or
- (7) any person engaged in bona fide research after a showing that such information is essential to the research and after first obtaining written permission from both the Director of Human and Social Services and the child through its representative.

History: 1980, PL 16-71 § 1; amd 1985, PL 19-23 § 2; amd 1988, PL 20-71; amd 2014, PL 33-10 § 16.

Amendments: 1985 Subsection (6) added after a showing that such information is essential to the research and after first obtaining written permission from both the Director of Health and the child through its representatives.

Research Guide: 21 ASC 2912

45.2024 Central registry-Access to records.

After a child, who is the subject of a report, reaches 18 years of age, access to a child's record under this section is permitted only if a sibling or offspring of the child is before that person and is a suspected victim of child abuse, sexual abuse, or neglect.

History: 1980, PL 16-71 § 1.

Research Guide: 21 ASC 2912.

45.2025 Central registry-Information expunged when.

Unless an investigation of a report conducted under this chapter determines there is some credible evidence of alleged abuse, sexual abuse, or neglect, all information identifying the subject of the report is immediately expunged from the central registry.

History: 1980, PL 16-71 § 1.

Research Guide: 21 ASC 2912.

45.2026 Central registry-Records sealed.

In all other cases, the record of the report to the central registry is sealed at no later than 10 years after the subject child's 18th birthday. Once sealed, the record shall not otherwise be available, unless the head of the central registry upon notice to the subjects of the report, gives his personal approval for an appropriate reason.

History: 1980, PL 16-71 § 1.

Research Guide: 21 ASC 2912.

45.2027 Central registry-Subject of report may receive information.

At any time, the subject of a report may receive, upon request, a report of all information contained in the central registry; provided, however, that the head of the registry may prohibit the release of data that would identify the person who made the report or who cooperated in a subsequent investigation which he reasonably finds to be detrimental to the safety or interests of that person.

History: 1980, PL 16-71 § 1.

Research Guide: 21 ASC 2912.

45.2028 Central registry-Request to alter report.

At any time, subsequent to the completion of the investigation, but in no event later than 10 years after the receipt of the report, a subject of the report may request the head of the registry to amend, seal, or expunge the record of the report. If he refuses or does not act within a reasonable time, but in no event later than 30 days after the request, the subject shall have the right to a fair hearing to determine whether the record of the report in the central registry should be amended or expunged on the grounds that it is inaccurate or it is being maintained in a manner inconsistent with this chapter. The burden, in the hearing, shall be on the department. In the hearings, the fact that there was a finding of child abuse, sexual abuse, or neglect is presumptive evidence that the report was substantiated.

History: 1980, PL 16-71 § 1.

Research Guide: 21 ASC 2912.

45.2029 Central registry-Written notice of amendment.

Written notice of any amendment or expungement made under this chapter, is served on each subject of the report.

History: 1980, PL 16-71 § 1.

Research Guide: 21 ASC 2912.

45.2030 Central registry-Release of data or information.

Any person who willfully permits and any other person who encourages the release of data or information contained in the central registry to persons not permitted the information by this chapter, is upon conviction, guilty of a class B misdemeanor.

History: 1980, PL 16-71 § 1.

Research Guide: 21 ASC 2912.

45.2031 Child abuse commission-Creation-Review.

(a) In the event a child is taken from parents due to child abuse, the parents may appeal, within 10 days, by written notice of appeal, to the Child Abuse Commission. The Commission shall be appointed by the Governor: 1 member of the medical staff from the LBJ Tropical Medical Center; 1 member of the Attorney General's staff; the Secretary of Samoan Affairs or his designee; 1 clergyman and the juvenile probation officer; and 2 members of the community at large.

(b) The Commission renders its decision in 5 days and may order other conditions or changes as it considers best for the child. The Commission may retain jurisdiction and review cases, from time to time, on a continuing basis. Decisions of the Commission are final for purposes of judicial review. Timely appeal to the Commission is a condition precedent to judicial review.

History: 1980, PL 16-71 § 1.

Research Guide: 21 ASC 2913.

45.2032 Education program.

The Child Abuse Commission cooperates with the Child Protection Agency in developing an active program of education and training in the villages, with the cooperation of religious organizations, private organizations, public health nurses, medical personnel, and in direct cooperation with the matais of respective families, to train parents regarding the differences between normal parental discipline and child abuse. This program is designed to establish an awareness of the medical and social problems of child abuse and the need for protective action.

History: 1980, PL 16-71 § 1.

Research Guide: 21 ASC 2914.